

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 75-4095

United States Court of Appeals FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

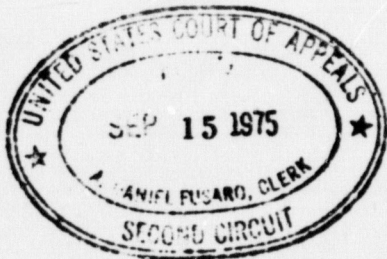
v.

LOCAL UNION 798 OF NASSAU COUNTY, NEW YORK,
BROTHERHOOD OF PAINTERS & ALLIED TRADES, AFL-CIO,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX



ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

PAGINATION AS IN ORIGINAL COPY

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APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

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LOCAL UNION 798 OF
NASSAU COUNTY, NEW YORK;
BROTHERHOOD OF PAINTERS
AND ALLIED TRADES, AFL-CIO

and

NASSAU DIVISION OF THE
MASTER PAINTERS ASSOCIATION
OF NASSAU-SUFFOLK COUNTIES INC.

and

NASSAU DIVISION OF THE GYPSUM
DRYWALL CONTRACTORS, INC.

Howard Edelman, Esq., for
the General Counsel.

Erwin Popkin, Esq., of
Garden City, N. Y., for
the Charging Party.

Ernest Fleischman, Esq., of
New York, N.Y., for the
Respondent.
----- x

Case No. 29-CB-1495

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Local Union 798 of Nassau County,
New York; Brotherhood of Painters
and Allied Trades, AFL-CIO

Case No.: 29-CB-4612

4.19.73 Charge filed.

9.20.73 Complaint and Notice of Hearing, dated.

9.26.73 Respondent's Answer, dated.

10. 3.73 Respondent's Request for Postponement of Hearing, dated.

10. 5.73 Regional Director's Order Rescheduling Hearing, dated.

11. 1.73 Respondent's Request for Postponement of Hearing, dated.

11. 2.73 Regional Director's Order Rescheduling Hearing, dated.

11.26.73 Hearing Opened.

11.26.73 Hearing Closed.

2. 8.74 Administrative Law Judge's Decision issued.

3.11.74 General Counsel's Exceptions to the Administrative Law Judge's Decision, received.

7.30.74 Decision and Order of the National Labor Relations Board, dated.

8.30.74 Respondent's Motion to Reopen Record Motion for Reconsideration, received.

9.13.74 General Counsel's Opposition to Respondents Motion to Reopen and Motion for Reconsideration, received.

11. 4.74 Board's Order Denying Motions, dated.

12.12.74 Respondent's Motion to Modify the Board's Order Herein Pursuant to Rule 102.49, received.

2.20.75 Board's Order Denying Motion, dated.

[Issued 2/8/74]

[JD-78-74
Brooklyn, N. Y.]

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DECISION

Statement of the Case

THOMAS S. WILSON, Administrative Law Judge: Upon a charge duly filed on April 19, 1973, by Nassau Division of the Master Painters Association of Nassau-Suffolk Counties, Inc. and Nassau Division of the Gypsum Drywall Contractors, Inc., herein referred to as the Charging Party or the Employer, the General Counsel of the National Labor Relations Board, herein referred to as the General Counsel^{1/} and the Board respectively, the Regional Director for Region 29 (Brooklyn, New York), issued its complaint dated September 20, 1973 against Local Union 798 of Nassau County, New York, Brotherhood of Painters and Allied Trades, AFL-CIO, herein referred to as the Respondent or the Union.

The complaint alleged that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A), (2) and (3) and Section 2(6) and (7) of the Labor Management Relations Act, 1947 as amended, herein referred to as the Act.

Respondent duly filed its answer admitting certain allegations of the complaint but denying the commission of any unfair labor practices.

Pursuant to notice a hearing thereon was held in Brooklyn, New York on November 26, 1973 before me. All parties appeared at the

^{1/} This term specifically includes the attorney appearing on behalf of the General Counsel at the hearing.

hearing, were represented by counsel, and were afforded full opportunity to be heard, to produce, examine and cross-examine witnesses and to introduce evidence material and pertinent to the issues. At the conclusion of the hearing oral argument was waived. Briefs were received from General Counsel and Respondent on January 16, 1974.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. Business of the Charging Parties

Nassau Division of the Master Painters Association of Nassau-Suffolk Counties, Inc., and Nassau Division of the Gypsum Drywall Contractors, Inc., are and have been respectively at all times material herein corporations duly organized under, and existing by virtue of, the laws of the State of New York.

At all times material herein, the Painters Association has maintained its principal office and place of business at 1399 Franklin Avenue in the town of Garden City, County of Nassau, and State of New York where it is, and has been at all times material herein, operating as an association of Employers, who are, and have been engaged in performing services in connection with painting, decorating, and paper hanging, in the building and construction industry.

At all times material herein, the Drywall Association has maintained its principal office and place of business at 1399 Franklin Avenue in the town of Garden City, County of Nassau, and State of New York, operating as an association of Employers engaged in performing services in connection with drywall, painting, taping, texturizing, finishing and related services in the building and construction industry.

At all times material herein, the Painters Association and Drywall Association have respectively performed, inter alia, the functions of negotiating, executing and administering collective-bargaining agreements on behalf of its respective employer-members with labor organizations representing employees employed by its employer-members.

During the past year, which year was representative of its annual operations generally, the employer-members of both the Painters Association and Drywall Association have respectively, in the course and conduct of their businesses, purchased and caused to be transported and delivered to their respective places of business, paints, dryboard and other goods and materials valued in excess of \$50,000 of which goods and materials valued in excess of \$50,000 were transported and delivered to their places of business in interstate commerce directly from States of the United States other than the State of New York.

The Painters Association and the Drywall Association, and each of them, is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization

Local Union 798 of Nassau County, New York, Brotherhood of Painters and Allied Trades, AFL-CIO has for many years last past been the recognized bargaining agent of all journeymen and apprentice painters, and decorators employed by the employer-members of the Painters Association.

At all times material herein the Union has been the recognized bargaining agent of all journeymen and apprentice drywall painters, tapers, texturizers, and finishers employed by the employer-members of the Drywall Association.

III. The Alleged Unfair Labor Practices

The facts of the instant case are deceptively simple. However, judging from the case authority cited in the briefs, as well as my own research, the answer to these facts is not quite so simple.

The Drywall Contractors, as part of the Charging Party, and the Union for the past 10 years or so have been parties to a series of collective-bargaining agreements covering employees engaged in the drywall and painting trades.

The jobs handled by the Drywall Contractors generally require from one to five or six tapers to the job. The evidence indicates that most of these jobs require but one or two employees per job. A few require more. These contractors also generally have a regular crew of employees but are free to seek additional help from Respondent, from fellow contractors or from the streets, as the case may be.

The instant dispute arose during negotiations between the above parties on a renewal contract for that which was to expire on April 1, 1973.

The agreement between the above parties expiring on April 1, recognized the Union as the bargaining representative of all employees employed by the Associations. It also provided for maintenance of membership as well as requiring union membership of new employees after 8 days of employment. Section 15(A) of this agreement provided:

On each and every job, the Union shall have the right to designate a job steward.

Paragraph (B) of Section 15 described the duties of such steward and (C) of that Section provided, inter alia, that "the steward shall not be dismissed or discriminated against for enforcing trade agreement conditions" as well as preconditioning his discharge or removal on other matters not material herein.

According to the union by-laws stewards are required to have been members of Respondent in continuous good standing for a period of 3 years.

Negotiations looking toward the renewal agreement opened between the parties hereto on December 13, 1972. Early in the negotiations the Union proposed that Section 15(A) be amended to read as follows:

Stewards to be appointed on all jobs from the Union office from the unemployed.

This stewards clause, as it was called, immediately became a bone of contention between the parties and remained such at all negotiation sessions, which were held thereafter on January 3 and 23, 1973, February 13 and 21 and March 1, 13, 20, 27 and 29. By March the proposed stewards clause had become worded as follows:

The Union to designate a steward to be referred from the union hall but that if the job is only a one-man job, the business representative of the Union would police these jobs without a steward being referred.

As of the final bargaining session of March 29 the parties had reached no agreement regarding the stewards clause.

The Union demanded the stewards clause in order, it contends, to better police the collective-bargaining agreement between the parties. It was convinced that there were certain evasions of the collective-bargaining agreement occurring, such as "lumping" wherein hourly rates were being supplanted by the payment of piece-work prices, improper use of "sticks and rollers" as provided for in the agreement, improper payments to funds for fringe benefits and a general lack of enforcement of trade rules. This, the Union claimed, was due to the fact that most, if not all, stewards on the jobs were regular employees of the contractors and as such regular employees were more interested in regular employment than in policing the contract and its terms.

On the other hand the Drywall Association objected to the fact that the appointment on the job of a steward who was not a regular employee of the contractor would force that contractor to employ a new man selected by the Union which would prevent the contractor from making accurate calculations on a job bid as they would not know the capabilities of the new employee as well as they knew the capability of the regular employees and, in addition, that such appointment might well require the contractors to layoff regular employees.

All efforts at arriving at a compromise on the stewards clause satisfactory to both parties failed just prior to the expiration of the expiring contract on April 1. There were, of course, two other clauses not agreed to on April 1, i.e., wages and the duration of the contract. However the main stumbling block was and remained the stewards clause. Wages, of course, were largely dependent upon the wage guidelines in force at that time. And the duration of the contract was of relatively minor importance.

With the expiration of the 1970-73 agreement on April 1 with these three clauses still at issue, the Union went on strike and remained on strike until April 30. During negotiations during the strike the contractors had offered to permit the Union to designate a steward on all five man jobs whereas the Union continued to demand the selection of the first man as steward on all jobs.

Finally at the end of April the parties broke this stalemate by agreeing upon the following stewards clause:

The Union, through the business representative, shall designate a qualified journeyman as a steward on each and every job and the Employer shall designate a foreman on each and every job subject to the following:

(a) There shall be a one year trial basis on the steward program subject to reopening at the expiration

of the first year of this agreement: The reopening limited to this item only.

(b) The Joint Trade Board to hear and determine all grievances on the steward issue.

(c) No work stoppage pending disputes on the steward issue.

(d) One-man jobs to be exempt from the stewards program subject to investigation by the business representative.

With this agreement on the stewards clause the issue on wages and on the duration of the contract were promptly settled. With agreement for a 3-year contract the Union promptly called off the strike, the men returned to work and have been working steadily ever since.

B. Conclusions

The General Counsel correctly argues that, as found above, the steward clause was the stumbling block to the consummation of a satisfactory agreement prior to the April 1 expiration date of the prior agreement. I agree. The Union's insistence upon the right to appoint a steward on the various jobs and the Drywall Association's equally adamant refusal of this right did prevent the attainment of a satisfactory collective-bargaining agreement prior to the strike and, in fact, caused the impasse which led to the strike.

In this state of affairs General Counsel in his brief argues:

The issue now remaining and the central issue is whether the original and agreed upon stewards clauses are discriminatory and therefore unlawful.

The Board has consistently held that a union violates the Act when it requires by agreement or otherwise an

employer to hire union members only, or to prefer union members over non-union members.^{2/}—

In the instant case both the original and the agreed upon modified stewards clause require that the Association prefer union members over non-union members. Both the original and the agreed upon stewards clause required the employer-members of the Association to accept an employee designated by Respondent to be the shop steward. Since Respondent by-laws require that a shop steward must be a member in good standing of Respondent for 3 continuous years the effect of the stewards clause is to require the employer-members of the Association to accept a member of the Respondent as one of his employees. The Employer would have no choice in the selection of the employee. Since the employer-members of the Associations have a fixed number of regular unit employees, this clause would require the employer-member to hire into his existing unit a 3-year Respondent member who would be steward, and it would operate without regard to whether or not the existing unit contained employees who satisfied the 3-year membership requirement. Thus the employer-member would be either forced to layoff an existing crew member or be restricted, because of limited job vacancies from hiring a new crew member who is not a Respondent member. Thus it is clear that the effect of this stewards clause required preference to Respondent members over nonmembers.

^{2/}— Citation of a number of cases involving discriminatory hiring hall and discriminatory agreement or understanding cases omitted.

It is recognized that Respondent may have a legitimate interest in having a member steward be employed in an existing unit of employees. However, the proposed clauses go beyond that legitimate interest because as set forth above they would require the employer-member to hire into an existing unit of employees a 3-year Respondent member as steward without regard to whether the existing unit contained any 3-year members thus requiring the employer-member to layoff an existing crew member or be restricted from hiring a new employee, not a member of Respondent.

For the reasons set forth above it is argued that both the original and agreed upon clauses are unlawful because they operate to cause job referral discrimination based upon membership in Respondent.

Much of the above argument might be true. However, as a practical matter, if the union security clause of the contract is being enforced as required after 8 days of employment, the alleged discrimination is much more theoretical than real. Regular crew members in all probability have worked for the Employer more than 8 days and thus under the terms of the union shop clause of the agreement would have to have become union members already. The same thing is also true regarding the theoretical new non-union employee who at the most has only 8 days before having to join the Union. Thus there is the theoretical possibility of some very temporary discrimination in regard to one man per job. But, if the union shop clause is enforced in accordance with its terms, that possibility is hardly real.

One of the prime objectives in the passage of the National Labor Relations Act was to provide the representative of the employees

in an appropriate unit with the right to bargain with the employer in regard to wages, hours and working conditions of those employees and to set those agreed upon matters down in writing in a signed collective-bargaining agreement. A necessary concomitant of that right to bargain collectively is the right of the Union to police that collective-bargaining agreement after its execution. Without the right to police the agreement, collective bargaining itself becomes nothing but a hollow act, a farce. Hence the right of the Union to have stewards on the job in order to police the agreement arrived at must be and has been a mandatory subject of bargaining.^{3/} This applies to the appointment, duties, responsibilities and tenure of stewards. It is obvious from the 1970-73 contract between these same parties that even these parties have recognized the above to be so. Section 15(A), (B) and (C) of that contract proves the recognition of this fact.

As the appointment, duties, responsibility and tenure of stewards on the job is a mandatory subject of bargaining as these parties themselves have recognized, the Union had the right to bargain to impasse in regard thereto as well as to resort to strike in order to reach satisfactory terms thereon. Even if we assume the slight theoretical possibility of discrimination as argued in General Counsel's brief, the importance and necessity of policing the collective-bargaining agreement far outweighs the highly theoretical possibilities of some discrimination somewhere. Otherwise collective bargaining becomes a hollow farce.

Upon the basis of the foregoing findings of fact and upon the entire record in this case, I make the following:

^{3/} See Marine & Shipbuilding Workers v. N. L. R. B., 320 F. 2d 615 (C. A. 3).

Conclusions of Law

1. Local Union 798 of Nassau County, New York Brotherhood of Painters and Allied Trades, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

2. Nassau Division of Master Painters Association of Nassau-Suffolk Counties, Inc., and Nassau Division of the Gypsum Wall Contractors, Inc., are individuals engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Local Union 798 of Nassau County, New York, Brotherhood of Painters and Allied Trades, AFL-CIO has not committed any violation of Section 8(b)(1)(A), (2) or (3) of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following:^{4/}

RECOMMENDED ORDER

I hereby recommend that this case be dismissed in toto.

Dated at Washington, D. C.

/s/ Thomas S. Wilson

Thomas S. Wilson
Administrative Law Judge

^{4/} In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[Dated 7/30/74]

[D--8863
Garden City, N. Y.]

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL UNION 798 OF NASSAU
COUNTY, NEW YORK; BROTHERHOOD OF
PAINTERS AND ALLIED TRADES, AFL--CIO

and

Case 29--CB--1495

NASSAU DIVISION OF THE MASTER PAINTERS
ASSOCIATION OF NASSAU-SUFFOLK COUNTIES,
INC. and NASSAU DIVISION OF THE GYPSUM
DRYWALL CONTRACTORS, INC. 1/

DECISION AND ORDER

On February 8, 1974, Administrative Law Judge Thomas S. Wilson issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed a reply brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, only to the extent consistent herewith.

This case involves negotiations between the two associations and the Respondent in late 1972 and early 1973 for a new collective-bargaining agreement, particularly for a new stewards clause. The old agreement, which expired on March 31, 1973, provided, "On each and every job, the Union shall have the right to designate a Job Steward."

1/ The name of the Charging Party appears as amended at the hearing.

It defined the duties of stewards as consisting of "examining the dues books and cards of Journeymen and Apprentices on the job and enforcing Trade Agreement conditions." At all material times herein, the Respondent's bylaws have provided that stewards must be members of the Respondent in continuous good standing for 3 years.

Early in the negotiations, the Respondent submitted a brief list of proposals stating in part, "Stewards to [be] appointed on all jobs from the Union Office." On January 23, the Union submitted a printed set of proposals containing the following:

- (15) All stewards for all jobs to be designated from the Union Hall from the ranks of the unemployed members.

During the remaining seven meetings prior to the expiration of the contract and the beginning of the strike, the Respondent insisted on inclusion of item 15, the proposed stewards clause.^{2/} At the March 29, meeting the stewards clause was discussed at length and the associations proposed modifications, first that the steward be the fifth man on the job and then that the steward be the third man on the job. At the conclusion of the meeting, the stewards clause, wages, and the duration of the contract were unresolved. On April 1, the Respondent struck. Although other issues had not been settled, the disagreement over the stewards clause caused the impasse which led to the strike. The record establishes that the parties promptly agreed to the other issues once they agreed to the stewards clause. In addition, Respondent's business representative testified that the Respondent was not going to give up the stewards clause under any circumstances.

^{2/} The record, contrary to the Administrative Law Judge's findings, indicates that item 15 was insisted upon until the second meeting during the strike.

At the first meeting after the commencement of the strike, the parties stood pat on the stewards clause. At the next meeting, on April 12, the Union proposed that the employers shall designate a foreman on each job and the Union shall designate a steward on each job from the Union. On April 30, the parties again met and resolved the outstanding issues. They agreed to a 3-year contract with a 75-cent wage increase each year, and to the following stewards clause:

The Union, through the business representative, shall designate a qualified journeyman as a steward on each and every job and the Employer shall designate a foreman on each and every job subject to the following:

(a) There shall be a one year trial basis on the steward program subject to reopening at the expiration of the first year of this agreement: The reopening limited to this item only.

(b) The Joint Trade Board to hear and determine all grievances on the steward issue.

(c) No work stoppage pending disputes on the steward issue.

(d) One-man jobs to be exempt from the stewards program subject to investigation by the business representative.

We are concerned here with the meaning of both the proposed (item 15) and the agreed-upon stewards clauses. Item 15 on its face states that stewards would be appointed from the ranks of the unemployed. Since members of the associations for the most part had regular complements of employees, the proposed clause meant that the Union was not satisfied to name an employee already in the

employ of the Employer, even though he might well meet the requirements of the Union's bylaws as to having been a union member in good standing for 3 years, but instead was insisting that an additional 3-year union member, designated solely by the Union, be hired and appointed as steward. The record demonstrates that this was the exact intent of the Union in insisting upon the inclusion of the clause. Gypsum Drywall Contractors' president, who was present at most of the bargaining sessions, testified as follows:

Q. What about as you agreed, to this proposal? Is the shop steward that is selected, does he come from someone that is employed by you in an existing complement or is he selected from someone who is not already employed by you?

A. He is selected by the Union, someone who is not employed by me.

Q. Now, with respect --

JUDGE WILSON: That's under this present contract?

THE WITNESS: Yes that's what I think he asked.

MR. EDELMAN: Yes, I did. That's my question.

Q. (By Mr. Edelman) So that the different wording aside, the practical difference would be that in the past years the shop stewards were selected from one of your normal employees and now they are selected from someone who is not a member of your normal staff?

A. That's correct.

Although the Respondent's recording secretary at the negotiations testified that the Union could, under the new agreement, designate a member of an employer's regular crew as shop steward, he shortly thereafter testified:

Q. But you had the right then to designate and say, "We don't want to pick a shop steward from the employees that you have previously employed, we'll send you one?"

A. That there is what we were fighting for, to protect our work.

Q. And to protect your work you wanted to be sure that you appointed a shop steward that you could send out to the job because you knew he would be the type of shop steward that would enforce and police the contract, is that correct?

A. That is correct.

The president of Gypsum Drywall Contractors further testified that the association resisted Respondent's proposals in part because the employers did not want to employ "strangers"; i.e., men from outside their crews. He testified that Respondent's stated position during the negotiations was to obtain a turnover of men to get the unemployed on jobs. The Union's testimony did not refute the contention that it was the intent of the clause to require the hiring of an additional person through the union hall, to be selected by the Union, but did assert that the reason for the clause was not to obtain additional employment, but rather to help assure better enforcement of the contract.

The General Counsel contends that both the proposed and the agreed-upon stewards clauses are unlawful preferential hiring clauses requiring the employer-members of the associations to hire 3-year members of Respondent as stewards, rather than having stewards appointed from the employers' regular work crews. The General Counsel also contends that the Respondent violated Section 8(b)(3) of the Act by negotiating to impasse and striking to secure an unlawful stewards clause. The General Counsel argues that the strike also violated Section 8(b)(2) and 8(b)(1)(A) because it was an attempt to cause discrimination through a preferential hiring clause; i.e., the stewards clause.

The Respondent argues that the clauses do not act to encourage union membership because each clause is valid on its face, anyone

eligible to become a steward would have long been a member of Respondent by virtue of the 8-day union security clause, and that no employer would be required to lay off a nonunion employee to accept a steward referred by Respondent. The Respondent further contends that the stewards clauses are mandatory subjects of bargaining, are necessary to police the contract, and promote the purposes of the Act by giving stability to labor regulations.

The Administrative Law Judge, in dismissing the complaint herein, found that the right to police the contract is fundamental to the right to bargain collectively. He further found that under the stewards provision there is a theoretical possibility of some discrimination, but that the possibility is hardly real because of the 8-day union-security clause. He concluded that the importance and necessity of policing the collective-bargaining agreement outweigh the theoretical possibilities of discrimination.

The issue before us is whether the stewards clauses arbitrarily encourage union membership by discriminating in favor of employment of union members. As we have found, the intent of the proposed clause, which was the central issue in the negotiations, and of the agreed-upon clause, as understood by the parties, was to permit the Respondent to require the hiring of persons designated by the Union to serve as stewards, it being understood that there would be new hires selected from outside the employers' regular work crews. Thus, the stewards provision plainly gives the Respondent significant control over the hiring of at least one employee on each job, excluding one-man jobs, and thereby inherently encourages union membership.

The Board recently stated in Ashley, Hickham---^{3/}Uhr Co.,
 "Not every encouragement of union membership is unlawful"

^{3/}
 210 NLRB No. 1. The union did not violate the Act by requiring the employer to hire a steward and lay off an employee because

Unlike that case, however, the Respondent herein has impinged on the employment relationship in a manner irrelevant to legitimate union interests. While Respondent has legitimate interests in appointing stewards and policing contracts, we do not here find legitimate justification for the insisted-upon union control over the hiring process. Any failure of stewards who were already employed to enforce the trade agreements could surely be controlled by appropriate union training or, if necessary, by internal union discipline of stewards who failed to perform responsibly. We see no compelling reason why Respondent required control over the hiring process in order to maintain proper employee representation.

The Act specifically prohibits discrimination in hiring on the basis of union membership. The fact that an 8-day union-security clause is permissible in this industry does not mean that a closed shop is permissible, nor that we can ignore discriminatory hiring practices by either companies or unions. Congress chose to permit agreements that an employee hired on a nondiscriminatory basis can be required to become a union member at an earlier date than in other industries, but it deliberately did not sanction the imposition of union membership as a condition of hire. We therefore are not persuaded, as was the Administrative Law Judge, that the violation which we have found here, can be excused by the 8-day clause in Section 8(f) of the Act.

^{3/} (Continued) the union had a "legitimate and valid concern for placing an experienced steward on a potentially troublesome jobsite." The steward was specified by name to deal with a specific jurisdictional problem. In the instant case, the Respondent has not sought to place a particularly knowledgeable steward on a troublesome jobsite or with a particularly difficult employer, but has sought blanket hiring preference on every job for an entire class --- i.e., all persons designated solely by the Union to serve as stewards.

For the above reasons, we find that the stewards provision, as insisted upon and agreed to, creates a hiring arrangement under which the Respondent gave its members preference in referrals. The Respondent has thereby attempted to cause the employers to discriminate against employees and applicants for employment in violation of Section 8(a)(3) of the Act and has, accordingly, violated Section 8(b)(1)(A) and (2) of the Act. By insisting on such provision and striking to obtain it, the Respondent has refused to bargain in violation of Section 8(b)(3) of the Act. We shall therefore order the Respondent to cease and desist therefrom and to delete the unlawful stewards provision.

Conclusions of Law

1. Local Union 798 of Nassau County, New York; Brotherhood of Painters and Allied Trades, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Nassau Division of the Master Painters Association of Nassau-Suffolk Counties, Inc., and Nassau Division of the Gypsum Drywall Contractors, Inc., are individuals engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By insisting upon, agreeing to, and maintaining an agreement with said associations that job stewards be appointed by the Respondent from outside the regular work forces of the members of said associations and thereby requiring employees to be members of Respondent as a condition precedent to obtaining employment, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

4. By insisting upon and striking to obtain said unlawful agreement, the Respondent has refused to bargain in violation of Section 8(b)(3) of the Act.

5. By the aforementioned acts, the Respondent has restrained and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

6. The aforementioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local Union 798 of Nassau County, New York; Brotherhood of Painters and Allied Trades, AFL-CIO, Mineola, New York, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Insisting upon, agreeing to, and maintaining a stewards clause or other agreement with Nassau Division of the Master Painters Association of Nassau-Suffolk Counties, Inc., or Nassau Division of the Gypsum Drywall Contractors, Inc., or any other employer, which requires employees to be members of the Respondent as a condition precedent to obtaining employment, except as authorized by Section 8(a)(3) of the Act.

(b) Causing or attempting to cause members of said associations, or any other employer, to discriminate against employees or prospective employees in violation of Section 8(a)(3) of the Act.

(c) Refusing to bargain in good faith by insisting to impasse upon and striking to obtain a provision of the collective-bargaining agreement requiring unlawful discrimination as set forth in paragraphs (a) and (b) hereof.

(d) In any like or related manner restraining or coercing employees or prospective employees of members of the said associations, or any other employer, in the exercise of their rights guaranteed in Section 7 of the Act, except as such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

2. Take the following affirmative action which is designed to effectuate the policies of the Act:

(a) Delete from the current collective-bargaining contract with the Nassau Division of the Master Painters Association of Nassau-Suffolk Counties, Inc., and Nassau Division of the Gypsum Drywall Contractors, Inc., the unlawful stewards clause mentioned in paragraph 1 of this Order.

(b) Post at its business office and meeting halls copies of the attached notice marked "Appendix."^{4/} Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notice is not altered, defaced, or covered by other material.

^{4/} In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C. , July 30, 1974

/s/ Edward B. Miller
Edward B. Miller, Chairman

/s/ Ralph E. Kennedy
Ralph E. Kennedy, Member

/s/ John A. Penello
John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

MEMBERS FANNING AND JENKINS, dissenting:

We agree with our colleagues that the real issue before us for determination is whether the stewards clauses sought by Respondent Union unlawfully encourage union membership by discriminating in favor of the employment of union members. We do not agree, however, with their conclusion that the existence of such discrimination has been established on the record before us.

These steward clauses provide, in effect, that the Union shall designate from the union hall the individual who is to be the steward on a particular job and that each such individual shall be selected from the ranks of the unemployed members. There would seem to be no dispute that the Union's purpose in seeking such a provision was to be able to more effectively police their collective-bargaining agreements with the two associations' employer members. Thus, the problem as the Union saw it was that each employer's work force remained relatively stable and, as a result, stewards appointed from among the employees of the employer were reluctant to jeopardize their steady employment by insisting upon full compliance with the terms of the collective-bargaining agreement.

Our colleagues reason that the ultimate effect of such a provision is to require the various employers to hire union members to the exclusion of nonmembers. But is such a conclusion realistic? Because of the 8-day union-security clause in this and prior agreements, it is highly unlikely that the hiring of a steward would cause the displacement of a nonunion employee. But even if such were the case, we have long since recognized that not every encouragement of union membership is unlawful. Rather, in cases such as this, we seek to determine whether the conduct in question is being carried out for the purpose of achieving legitimate union objectives pursuant to their role as collective-bargaining representative.

Frankly, we can see no ulterior motive on the Union's part, nor does the evidence even suggest one. The Union's purpose clearly must be as it has stated, to police more effectively its collective-bargaining agreement with these employees. In the recent Ashley, Hickham---Uhr Co., case,^{5/} this Board recognized the lawfulness of precisely this same objective and we fail to see how the degree or extent of the union's problem can have any bearing on the lawfulness or unlawfulness of its conduct. Conduct which is engaged in solely for the purpose of promoting legitimate union objectives under the collective-bargaining relationship cannot be classified as an arbitrary encouragement of union membership and we would so find.

In short, the Union was attempting to secure adequate policing of its contract by union members who were more independent of the employer than his regular work force. It seems obvious that a steward should be a union member. Selecting him from those outside the regular employee complement seems to us to be justifiable here, and the "encouragement" of union membership by such action to be undiscernible.

For the foregoing reasons, we would dismiss the complaint in its entirety.

Dated, Washington, D. C., July 30, 1974.

/s/ John H. Fanning	
John H. Fanning,	Member

/s/ Howard Jenkins, Jr.	
Howard Jenkins, Jr.,	Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a trial at which all sides had the chance to give evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and ordered us to post this notice:

WE WILL NOT insist upon, agree to, or enforce any agreement with any member of Nassau Division of the Master Painters Association of Nassau-Suffolk Counties, Inc., or Nassau Division of the Gypsum Drywall Contractors, Inc., or any other employer, which provides that job stewards be appointed by us from outside the regular work forces of the members of said associations, and which thereby requires employees to be members of a labor organization as a condition precedent to obtaining employment.

WE WILL NOT cause or attempt to cause members of said associations, or any other employer, to discriminate against employees or prospective employees in violation of Section 8(a)(3) of the National Labor Relations Act, as amended.

WE WILL NOT insist upon and strike to obtain said unlawful agreement with the said associations, or any other employer.

WE WILL NOT in any like or related manner restrain or coerce employees or prospective employees or members of said associations, or any other employer, in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL delete from the current collective-bargaining agreement with said associations the aforementioned unlawful stewards clause.

LOCAL UNION 798 OF NASSAU
COUNTY, NEW YORK; BROTHER-
HOOD OF PAINTERS AND ALLIED
TRADES, AFL--CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212--596--3535.

[Received 8/30/74]

* * * * *

MOTION TO REOPEN RECORD
MOTION FOR RECONSIDERATION

Local Union 798 of Nassau County, New York, of the Brotherhood of Painters and Allied Trades, AFL-CIO, the Respondent herein, by its attorneys, Delson & Gordon, hereby moves the National Labor Relations Board as follows:

1. On July 30, 1974, the National Labor Relations Board issued its Decision in the instant proceeding, two members dissenting, reversing the prior decision of the Administrative Law Judge dated February 8, 1974, in favor of the Respondents.

2. The controversy herein concerns the legality of a demand made by Respondent during collective bargaining negotiations for a new agreement in the painting and drywall industries. Basically, the demand was for a clause which would afford the Respondents the right to appoint shop stewards on jobs performed within the jurisdiction of Respondent Union. This right of appointment would not be restricted to the employer's employees already working on the job sites. Instead, this requested right would permit Respondent Union the opportunity to appoint the job steward from "outside" the employer's work force.

3. The previous collective bargaining agreement between the parties herein had contained a "JOB STEWARDS" clause as follows:

"SECTION 15 (A). On each and every job, the Union shall have the right to designate a Job Steward. Chargemen may not be Stewards.

(B) The duty of each Steward shall consist of examining the dues books and cards of Journeymen

and Apprentices on the job and enforcing Trade Agreement conditions. A Steward shall perform his work as a Journeyman. Whenever a Steward has been designated for a particular job and the Employer retains such Steward on a separate job as a Journeyman, such Steward shall be reassigned to the original job by such Employer to act as Steward whenever work shall be resumed on such original job.

(C) The Steward shall not be dismissed or discriminated against for enforcing Trade Agreement conditions nor shall he be discharged or removed unless, and until, the Employer shall have first appeared before a meeting of the Joint Trade Board (If the Employer be a member of the Association) and show cause to justify such removal and the Executive Board of this Union shall have designated another to act in his place and stead; but such action shall not affect his right to remain on the job as a Journeyman. If the Employer be not a member of the Association then the Steward shall not be dismissed nor discriminated against for enforcing Trade Agreement conditions, nor shall he be discharged or removed unless and until the Employee shall have first appeared before a meeting of the Executive Board of the Union and show cause to justify such removal and the said Board shall have designated another to act in his place and stead; but such action shall not affect his right to remain on the job as a Journeyman. "

4. The collective bargaining agreement negotiated between the parties in April 1973 contained the following clause:

"The Union, through the business representative, shall designate a qualified journeyman as a steward on each and every job and the employer shall designate a foreman on each and every job subject to the following:

a) There shall be a one-year trial basis on the steward program subject to reopening at the expiration of the first-year of this agreement; the re-opening limited to this item only.

b) The Joint Trade Board to hear and determine all grievances on the steward issue.

c) No work stoppage pending disputes on the steward issue.

d) One man jobs to be exempt from the steward's program subject to investigation by the business representative.

5. In its original proposal during collective bargaining negotiations, the Respondent herein sought to select and appoint job stewards from the ranks of unemployed members. This proposal was subsequently modified to read in accord with paragraph 4 above.

6. The Board Decision in this matter indicates concern with an alleged discriminatory effect the utilization of this

clause would have upon non-union workers. Specifically, the Board Decision states:

"The issue before us is whether the stewards clauses arbitrarily encourage union membership by discriminating in favor of employment of union members. As we have found, the intent of the proposed clause, which was the central issue in the negotiations, and of the agreed-upon clause, as understood by the parties, was to permit the Respondent to require the hiring of persons designated by the Union to serve as stewards, it being understood that there would be new hires selected from outside the employers' regular work crews. Thus, the stewards provision plainly gives the Respondent significant control over the hiring of at least one employee on each job, excluding one-man jobs, and thereby inherently encourages union membership. "

7. A reading of the Record indicates that Respondent never intended to deprive non-union workers of jobs in the painting and drywall industry by insisting on the Steward's clause. Furthermore, a reading of the Record indicates that Respondent's officers did not believe that it even possessed such a right.

"JUDGE WILSON: So that that meant, did it not, that if the employer had a local union man in his regular crew that the union could designate that man as the steward?

THE WITNESS: That was under the old agreement.

JUDGE WILSON: Was that so under the new agreement, too?

A VOICE: The union could designate -- excuse me.

THE WITNESS: That's right.

JUDGE WILSON: All right.

MR. EDELMAN: I missed that, Your Honor. I was --

JUDGE WILSON: You better read it back to him, Mr. Reporter, please.

The testimony requested was read back as follows:

'Judge Wilson: So that that meant, did it not, that if the employer had a local union man in his regular crew that the union could designate that man as the steward?

'The Witness: That was under the old agreement.

'Judge Wilson: Was that so under the new agreement, too?

'A Voice: The Union could designate -- excuse me.

'The Witness: That's right'

MR. FLEISCHMAN: The witness says yes.

MR. EDELMAN: To what, that they could designate from the original complement?

JUDGE WILSON: Yes.

Q. (By Mr. Edelman) But it also gave the union greater latitude; In other words, for example,

let's say an employer had on his staff three employees and none of whom the union had any confidence in.

The union then had a right to say, 'No, we don't want to designate any man on your complement of employees. We want you to take another man that we have. We want you to put him on as the steward and lay one of them off -- lay one of your employees off'?

The union had the right to do that under this clause, is that not correct?

- A. I don't think the union ever stated about telling an employer to lay off any man because we haven't got that right. (emphasis added) (Record pp. 97-9)

8. It is clear from the above that the Union has never entertained the thought that it could require the lay-off of any employee as the consequence of the clause in question. There was, of course, no evidence that the clause had ever been applied so as to disfavor or harm a non-union member, but at the hearing the hypothetical possibility that the clause might have that effect was raised. In our brief to the Board replying to exceptions taken to the Decision of the Administrative Law Judge, counsel for the Union wrote:

"And the Union has stated that if a hypothetical situation ever becomes a reality, that the application of the provision would ever result in a particular instance to favor a union

member over a non-union member, the clause would not be applied.

The commitment of counsel as set forth in its brief to the Board on behalf of the Union was made in the belief that the Record fully supported the statement and was, of course, made because it accurately reflected the Union's position.

9. Upon a review of the Record itself it appears that the testimony does not fully support counsel's recollection as set forth in its brief to the Board. For that reason Respondent respectfully requests through the instant motion that the Record be reopened in order to permit Respondent to specifically state in the Record that the agreed upon clause contained in the Employer and Union Memorandum of Agreement dated April 30, 1973, set out in paragraph 4 above, and admitted into evidence as General Counsel's Exhibit "7" would not be applied so as to deprive a non-union worker of his job; and, if desired by the Board, amend this clause so as to render the clause inoperative if its application would cause the loss of employment by a non-union employee. It is this statement and only this statement which Respondent requests be inserted into the Record herein.

10. Based upon the insertion of this commitment into the Record, Respondent then requests that the Board give reconsideration of its July 30, 1974 Decision in this matter. In Respondent's opinion, removing the possibility of any discrimination whatsoever renders this case appropriate for an affirmance of the Administrative Law Judge's Decision.

11. The legality of the clause per se is not at issue here. Indeed, the Board has recognized the legality of the instant clause in its Decision. In addition, the minority opinion of members Fanning and Jenkins indicates that the possibility of a non-union

worker being laid off by the operation of this clause was "highly unlikely". To have such an effect, the following facts must be present:

- (a) a non-union worker must be present on the job;
- (b) the non-union worker must be within the 8 day security clause;
- (c) assuming (a) and (b) above, during this time (the 8 day period) a steward must be appointed by Respondent Union to the same job;
- (d) the Employer must decide that the non-union worker is the one to be laid off.

12. In short, the Respondent's motive in adopting this clause is "to police its agreement more effectively." In order to accomplish same, Respondent would not insist upon the application of the clause where its effect would be to deprive a non-union worker of a job.

WHEREFORE, Respondent respectfully prays for an Order permitting a reopening of the Record of this case to insert the clause stated in paragraph 4 into the Record, and upon such an amended Record, Respondent moves the Board to reconsider its Decision in this matter and affirm the Decision of Administrative Law Judge Wilson finding that Respondent did not violate the Act with respect to the "steward's clause" herein; or, if the Board deems necessary, to modify its Order so that it is limited to the requirement that the clause be amended to effectuate the commitment expressed in the brief already submitted to the Board, in the accompanying affidavit and in this motion.

Dated: New York, New York
August 29, 1974

/s/ Delson & Gordon
DELSON & GORDON
Attorneys for Respondent
Office and P. O. Address
230 Park Avenue
New York, New York 10017
(212) 686-8030

SUPPORTING AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NASSAU) SS. :

ARTHUR J. MORELLI, being duly sworn, deposes and says:

1. I reside at 921 Little Neck Avenue, North Bellmore, New York.
2. I have been a business representative for approximately twelve years with Local Union 798, Nassau County, New York, of the Brotherhood of Painters and Allied Trades, AFL-CIO.
3. I was present at most of the collective bargaining sessions mentioned in this case. In addition, I have given testimony in this proceeding before Administrative Law Judge Thomas S. Wilson at the offices of Region 29, 16 Court Street, Brooklyn, New York.
4. Regarding the effect of the "Stewards Clause," it was never the intention of the Union to deprive a non-union man of a job. The main point the Union was trying to make by requesting this clause from the employer was to be able to police more efficiently its current agreement.
5. As I testified already in this proceeding, certain violations of the agreement were not being reported by Union men and sometimes, more significantly, by the shop steward on the job. In order to protect our work, we requested this clause in the current agreement. It was felt by myself and the officers of the Union that if we had a steward on the job that we could depend upon to report these violations, whether he came from the Hall or was already on the job, then this objective would be realized.
6. The clause has now been in effect for over one year. No layoffs have resulted that I know of; no non-union men have been

deprived of jobs that I know of; the communication from steward to Union Hall has been immeasurably improved; and I have received no complaints on it from the employers.

7. If I may say at this point, the possibility of this clause having the effect of laying off a non-union man was rather remote. I think our attorney's motion papers attached sufficiently explains this point.

8. Nevertheless, to make it perfectly clear that the Union does not wish to become a party to the layoff of a non-union man by insisting upon this clause, and in support of our attorney's motion papers attached, I am willing to testify on the Record that the Union will go so far as to formally amend this Memorandum of Agreement of April 30, 1973 to accomplish this. I will testify that the Union will not insist that this clause be followed when the Employer indicates that he will have to lay off a non-union man if called upon to "make room" for the steward; and I will testify that the Union will formally amend the Memorandum of Agreement referred to above to accomplish this objective.

9. It is my belief that this clarification on the Record would remove any doubt whatsoever that the Union was trying to "encourage membership" and deprive non-union people of jobs through this clause. The fact is that this is simply not so. As I stated above, our intention is simply to police our agreement and make sure the Employer lives up to his end of the bargain. Under the old clause it was extremely difficult and at times impossible to do this.

Sworn to before me this
29th day of August, 1974.

/s/ Arthur J. Morelli

s/ Shirley G. Shire

Notary Public

Shirley G. Shire, Notary Public, State of New York
No. 31-4503935, Qualified in New York County
Commission Expires March 30, 1975

STATE OF NEW YORK)
)
 COUNTY OF NEW YORK) ss. :

SHIRLEY G. SHIRE being duly sworn, deposes and says:
 deponent is not a party to the action, and is over 18 years of
 age and resides at 20 East 35th Street, New York, New York
 10016. On August 29, 1974 deponent served the within Motion
 to Reopen Record and Motion for Reconsideration on the
 following:

Hon. Samuel M. Kaynard
 Regional Director
 Region 29
 National Labor Relations Board
 16 Court Street
 Brooklyn, N. Y. 11201

Brotherhood of Painters and
 Allied Trades, AFL-CIO Local
 Union 798, Nassau County
 306 Jericho Turnpike
 Mineola, New York 11501

Nassau Division of the Master
 Painters Association of Nassau-
 Suffolk Counties, Inc. ,
 c/o Irwin Popkin, Esq.,
 1399 Franklin Avenue,
 Garden City, New York 11508

Irwin Popkin, Esq. ,
 Popkin, Barnett & Honorof, Esq.
 1399 Franklin Avenue
 Garden City, New York 11508

at the above addresses designated by said parties for that purpose
 by depositing a true copy of same enclosed in a post-paid properly

addressed wrapper, in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

/s/ Shirley G. Shire

Sworn to before me this
29th day of August, 1974

/s/ Robert P. Wittes
Notary Public

Robert P. Wittes
Notary Public, State of New York
No. 31-4318015
Qualified in New York County

[Dated 11/4/74]

* * * * *

ORDER DENYING MOTIONS

On July 30, 1974, the National Labor Relations Board issued a Decision and Order^{1/} in this proceeding, finding that the Respondent violated Section 8(b)(1)(A), (2), and (3) of the National Labor Relations Act, as amended. Thereafter, the Respondent filed a Motion to Reopen Record and Motion for Reconsideration, together with a supporting affidavit. The Respondent requested that the Record be reopened to take evidence that no non-union employee would be discharged or laid off as a result of the stewards provision, which was found to be unlawful. The Respondent moved for reconsideration stating that the above evidence indicates that the provision does not discriminate. The General Counsel filed a brief in opposition stating, inter alia, that the legality of the provision per se was in issue.

The Board having duly considered the matter:

IT IS HEREBY ORDERED, Members Fanning and Jenkins dissenting that the Respondent's Motion to Reopen Record and Motion for Reconsideration be, and they hereby are, denied as lacking in merit.

Dated, Washington, D. C. , November 4, 1974.

By Direction of the Board:

George A. Leet

Associate Executive Secretary

[Dated 12/10/74]

* * * * *

MOTION TO MODIFY THE BOARD'S ORDER
HEREIN PURSUANT TO RULE 102.49

Local Union 798 of Nassau County, New York, of the Brotherhood of Painters and Allied Trades, AFL-CIO, the Respondent herein, by its attorneys, Delson & Gordon, hereby moves the National Labor Relations Board as follows:

1. On July 30, 1974, the National Labor Relations Board issued a Decision and Order in the instant proceeding, two members dissenting, which reversed a prior decision of Administrative Law Judge Thomas S. Wilson dated February 8, 1974, in favor of Respondent. The July 30, 1974 Decision found, inter alia, that Respondent had violated Sections 8(b)(1)(A) and 8(b)(2) of the Act for its insistence upon the inclusion of a job-steward clause in its current collective bargaining agreement the language of which, under a certain circumstance, constituted a per se violation because, on its face it could be used to afford Respondent's members preference in referrals for job opportunities.

2. On August 29, 1974, Respondent, by its attorneys, filed Motions to Reopen the Record and for Reconsideration with the National Labor Relations Board regarding the July 30, 1974 Board Decision and Order. These motions sought to permit introduction of additional evidence which Respondent thought would clarify the record so as to show that there was no discrimination and would be no discrimination under the clause.

3. On November 4, 1974, the National Labor Relations Board issued an Order denying said Motions to Reopen the Record and for Reconsideration, two members dissenting.

4. No member of the Board in this case took the position that there was no value under the Act in enabling a union to select job stewards who were able to help enforce and administer the collective bargaining agreement which the parties had reached. But a majority of the Board found that the language of the clause was per se violative of the Act because the clause could be used to encourage union membership in the admittedly unlikely situation where it might result in layoff of a non-union worker, that is, an employee in his first seven days of employment for the employer. Theory aside, in practice under the facts in this industry, the appointment of a job-steward by the Respondent would simply effect the replacement of one union employee for another union employee if it resulted in any loss of employment at all.

5. The Respondent never has, does not wish to, and never intended to violate the Act through the incorporation of this clause into the collective bargaining agreement. The Board has recognized the underlying validity of the clause. By ordering the deletion of the entire clause the Board is throwing out the baby with the bath water.

6. Through the instant Motion to Modify the Board Order of July 30, 1974, Respondent respectfully requests the National Labor Relations Board for a modification of its July 30, 1974 Order by requiring the Respondent to limit its appointment of job stewards so that, on its face, the language of the clause could not permit an advantage based on union membership.

7. Respondent respectfully requests that the Board modify its July 30, 1974 Order by approving the following contractual language in lieu of requiring the deletion of the entire clause as now written.

"The Union, through the business representative, shall designate a qualified journeyman as a steward on each and every job, but not on those

jobs where said designation could result in the
layoff of an employee who is not a member of the
Union, and the employer shall designate a foreman
on each and every job subject . . .

- a) There shall be a one-year trial basis on the steward program subject to reopening at the expiration of the first year of this agreement; the reopening limited to this item only.
- b) The Joint Trade Board to hear and determine all grievances on the steward issue.
- c) No work stoppage pending disputes on the steward issue.
- d) One man jobs to be exempt from the steward's program subject to investigation by the business representative.
- e) When the designation of a steward might result in the layoff of an employee who is not a member of the Union, then the Union may designate a qualified journeyman as a temporary steward from the employer's regular work crew to serve until such time as the designation of some other qualified journeyman as steward can no longer result in the layoff of an employee who is not a member of the Union. "

8. The Board has broad powers to fashion appropriate remedies. The outstanding Order does more than promote the ends of the Act; it overpenalizes poor draftsmanship. The modified order applied for herein will fully promote the ends of the Act

because the language itself can no longer be construed to favor union membership while the laudable end of enabling the Respondent to appoint stewards who will be able to enforce and administer the collective bargaining agreement will have been retained.

WHEREFORE, Respondent respectfully prays for a Modification of the Board Order of July 30, 1974 which deletes the alleged illegal clause in toto to the extent that the Board substitutes therefor the requirement that the Respondent limit its appointments of job stewards in accordance with the language set forth in Paragraph 7 above, or in accordance with such other language which the Board deems appropriate to remedy the illegality found.

Dated: New York, New York
December 10, 1974

/s/ Delson & Gordon
DELSON & GORDON
Attorneys for Respondent
Office and P. O. Address
230 Park Avenue
New York, New York 10017
(212) 686-8030

STATE OF NEW YORK)
) SS. :
COUNTY OF NEW YORK)

SHIRLEY G. SHIRE, being duly sworn, deposes and says:
deponent is not a party to the action, and is over 18 years of age
and resides at 20 East 35th Street, New York, New York 10016.
On December 10, 1974 deponent served the within Motion to Modify
Board Order on the following:

Hon. Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, N. Y. 11201

Brotherhood of Painters and
Allied Trades, AFL-CIO Local
Union 798, Nassau County
306 Jericho Turnpike
Mineola, New York 11501

**Nassau Division of the Master
Painters Association of Nassau-
Suffolk Counties, Inc.
c/o Irwin Popkin, Esq.
1399 Franklin Avenue
Garden City, New York 11508**

at the above addresses designated by said parties for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

/s / Shirley G. Shire

Sworn to before me this
10th day of December, 1974.

/s/ Lynn Ehrenberg

Notary Public

Lynn Ehrenberg, Notary Public
State of New York, No. 30-1086550
Qualified in Nassau County
Commission Expires March 30, 1975

[Dated 2/20/75]

[Garden City, N. Y.]

* * * * *

ORDER DENYING MOTION

On July 30, 1974, the National Labor Relations Board issued a Decision and Order^{1/} in this proceeding, finding that the Respondent violated Section 8(b)(1)(A), (2), and (3) of the National Labor Relations Act, as amended. Thereafter, the Respondent filed a Motion to Modify the Board's Order Herein Pursuant to Rule 102.49. Respondent requests the Board to modify its Order by approving a revised contract clause.

The Board having duly considered the matter;

IT IS HEREBY ORDERED that Respondent's Motion be, and it hereby is, denied because consideration of the revised contract clause is not an issue which has been litigated in this proceeding and is therefore not properly before the Board.

Dated, Washington, D.C. , February 20, 1975.

By direction of the Board:

George A. Leet

/s/ George A. Leet
George A. Leet
Associate Executive Secretary

GENERAL COUNSEL'S EXHIBIT NO. 2

1/12/73

GYPSUM DRYWALL CONTRACTORS OF NEW YORK, INC.

ANTHONY ALESSI
Alessi Construction Corp.
P. O. Box 339
Ridge, N. Y. 11961
924-8140

JOSEPH CIESLEWICZ
Cieslewicz Bros. Inc.
3590 Park Avenue
Wantagh, New York 11793
SU 5-5460

WILLIAM GREGORIO
Modern Dry Wall Construction Corp.
2251 Jericho Turnpike
Garden City Park, New York 11040
PI 7-0089, PI 2-9128

JACK ITALIANO
Jack Italiano, Inc.
70 Juanita Avenue
Huntington, New York 11743
271-1800

ARTHUR OLSEN
Finished Rite Construction Corp.
1750A Goldbach Avenue
Ronkonkoma, New York 11779
981-1114

MICHAEL PETRULLI
A & M Wallboard, Inc.
2508 Coney Island Avenue
Brooklyn, New York 11223
212 998-0381

General Counsel's Exhibit No. 2 (Continued)

DONALD E. STEPHAN
Wallboard Enterprises Corp.
P. O. Box P 567
Bay Shore, New York 11706
MO 6-7990

ALEX TISEO
East Hills Construction Co., Inc.
850 Conklin Street
Farmingdale, New York
293-6212

JOSEPH TORONTO
Dyker Dry Wall Corp.
1279 79th Street
Brooklyn, New York 11566
212 836-7277

CHARLES VALDINI
Valdini Drywall Corp.
164 Cabot Street
West Babylon, New York 11704
249-5777

GENERAL COUNSEL'S EXHIBIT NO. 3

MASTER PAINTERS' ASS'N
OF NASSAU & SUFFOLK COUNTIES, INC.

P. O. BOX 177
DEER PARK, N. Y.

MEMBERS FOR THE YEAR BEGINNING
1 / 1 73 THROUGH 12 / 31 73:

ARDMORE PAINTING CONTRACTING CO., INC.
952 Ardmore Road
Baldwin, New York 11510

CLARK, GEORGE
2151 Marion Place
Baldwin, New York 11510
516-BA 3-8380

CLASSIC PAINTING AND DECORATING CORP.
Kaintuck Lane
Locust Valley, New York 11560
(Bernard Epstein)
516-OR i-4325

DE LUCIA DRYWALL CORP.
126 McKinley Street
Massapequa Park, New York 11762

DENBAR DECORATING CO., INC.
1040 East 28th Street
Brooklyn, New York 11212
(Irving Howard)
212-DE 8-8698

FAIRMACK PAINTING CONTRACTING CO.
Old Commack Road, P. O. Box #169
Commack, New York 11725
(Mr. Rothstein)
Home:- 41-45 Pershing Crescent
Jamaica, New York
212-441-2548

Members for the year beginning 1/1/73 through 12/31/73:

FLORELLE PAINTING CO.
(Mr. Metrig)
106 Shelter Lane
Levittown, New York 11756
516-PE 1-4184

FORGIONE & WALLACE
(Anthony Forgione)
32 Amherst Street
Williston Park, New York 11596
516-Pi 6-1738

GABRIELE, ANTHONY
10 Jefferson Avenue
Bayville, New York 11709
516-NA 8-1343

GOMBERT BROS., INC.
(Valentine Gombert)
117 Brook Avenue
Deer Park, New York 11729
516-586-4400

HEMLOCK PAINTING & DECORATING CO., INC.
(Irving Baitz)
240 Old Country Road
Hicksville, New York 11801, 516-OV 1-5865

HERMAN PAINTING & DECORATING CO., INC.
(Nathan Herman)
223 Main Street
Post Washington, New York 11050
Home Phone #212-GL 4-0399

ITALIANO, JACK, INC.
70 Juanita Avenue
Huntington, New York 11743
516-271-1800

LUEKEN, HARRY
6 Viola Place
East Islip, New York 11730

Members for the year beginning 1/1/73 through 12/31/73:

MICELI, PETER F., INC.
(Peter Miceli)
139 Monett Place, P. O. Box #132
Greenlawn, New York 11740
516-HA 1-2615

M. P. PAINTING, INC.
(Martin Priebe)
335 Johnson Avenue
Sayville, New York 11782
516-589-1700

PALA PAINTING & DECORATING CORP.
(Nick Palozotto)
116 Mahew Avenue
Babylon, New York 11704
516-MO 1-3580

PRICE, FRANK G.
37 Beverly Road
Merrick, New York 11566
516-FR 9-1298

PRIMAL DECORATING CO.
(Robert Elrod)
17 Avon Court
Huntington Station, New York 11746
516-MY 2-5132 or HA 7-6408

SANZONE, VINCENT PAINTING COMPANY
61 West Merrick Road
Valley Stream, New York 11580

SAROWITZ, LEO
710 Middle Country Road
Selden, New York 11784
516-732-1000

S. & F. PAINTING
(Mike De Salvo)
6 Julia Lane
East Northport, New York 11731
516-368-3976

Members for the year beginning 1/1/73 through 12/31/73:

SUFFOLK PAINTING COMPANY

(Mr. Perrin)

P. O. Box #73

MASTIC, NEW YORK 11950

516-281-3144

Home - 11 Abbey Lane

Shirley, New York

TARKAN PAINTING CO.

(Nate Tarkan)

167 Herricks Road

Garden City Park, New York 11040

516-CH 8-9020

VALENTINE, PETER INC.

1881 Bay Blvd.

Atlantic Beach, New York 11509

516-239-3305

Home No. 516-239-3513

WEIDENBAUM BROS., INC.

(Hyman Weidenbaum)

146 Stratford Road

New Hyde Park, New York 11040

516-Pi 6-1468

CERAMIX SPRAYING, INC.

55 Skyline Drive

Plainview, New York 11803

ASSOCIATE MEMBERS:

COLONIAL WALLPAPER COMPANY

(Tom Hoffman)

54 Longoak Street

Smithtown, New York

DEBEVOISE COMPANY (THE)

74 - 20th Street

Brooklyn, New York 11232

Associate Member (Continued)

GENERAL TIRE & RUBBER COMPANY
979 Third Avenue
New York, New York 10022

GILFORD, INC.
387 Park Avenue South
New York, New York 10016

JONES, DAN SPRAY EQUIPMENT CO., INC.
214 Commack Road
Commack, New York 11725

LYNNE, J. M., INC.
149 Sullivan Lane
Westbury, New York 11590
(Al Lee)

ORANGE FRONT PAINT SUPPLY CO., INC.
224 Front Street
Hempstead, New York

PPG INDUSTRIES, INC.
301 West John Street
Hicksville, New York 11801

W-G VINYLs, INC.
132 West 21st Street
New York, New York 10011
(Frank Carr)
212-255-3300

EXCERPTS FROM GENERAL COUNSEL'S EXHIBIT NO. 4

* * * * *

AGREEMENT

THIS AGREEMENT made this 1st day of April 1970, by and between the Nassau Division of the Master Painters Association of Nassau-Suffolk Counties, Inc. and the Nassau Division of the Gypsum Dry Wall Contractors of New York, Inc., which Divisions of the Associations is hereinafter referred to as Associations (or in the event this Trade Agreement is signed by a Painting and/or Dry Wall Contractors, not a member of either such Associations then this Trade Agreement is entered into between the "Union" and such Contractor individually) and the members of the Associations including but not limited to those who are members at the time this Trade Agreement is entered into or who become members of the Associations during the duration of this Trade Agreement, which members and the individual Contractors are all referred to as Employers or Employer and Local Union 798 of Nassau County, New York; Brotherhood of Painters, and Allied Trades of America, AFL-CIO hereinafter referred to as the Union.

WITNESSETH

WHEREAS, the parties hereto intend to make and establish the terms and conditions under which the workers, who shall be herein referred to as Journeymen (it being agreed that the word Journeyman means an experienced mechanic who has completed the three year apprenticeship, whether or not he is or was a member of the Union) or as apprentices shall work, and by which the Employer shall hire; and

WHEREAS, the Union is recognized as the bargaining representative for all the Journeymen and Apprentices employed by the Employers herein wherever such employees may be employed; and

WHEREAS, the Gypsum Dry Wall Contractors of New York, Inc. Association is recognized as a bargaining representative for all the employers who are members thereof, the Union recognizes drywall as a specialty trade and the Drywall Contractors as specialty trade and the Drywall Contractors as specialty contractors for collective bargaining purposes, and for those employers not members thereof who may designate such Gypsum Dry Wall Contractors of New York, Inc. Association as their bargaining representative, provided that any employer shall not be accepted as a member of the Association or may designate the Association as his bargaining agent if he is at that time the subject of a charge by the Union that he has violated this Trade Agreement, and * * *

* * * * *

After the completion of the taping and texturing operations, should any coatings of any kind be required, under the trade agreement between the Nassau Division of the Master Painters Assn. of Nassau and Suffolk Counties, Inc., and Painters L. U. 798, Nassau County, N. Y. then the provisions of the painting agreement shall apply for such operations.

SECTION 2. The Associations (Employer) obligates itself for its members, and the Independent Employer, not a member of the Associations, obligates itself, and the union obligates itself for its members that they and each of them will faithfully perform all the terms and conditions of this Agreement on their parts to be performed.

SECTION 3. (A). It shall be a condition of employment that all employees of the Employer covered by this agreement who are

members of the Union in good standing on the execution date of this agreement shall remain in good standing and those who are not members on the execution date of this agreement; shall become and remain in good standing in the Union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after its execution date shall on the eighth day following the beginning of such employment become and remain members in good standing in the Union.

(B). Journeymen and apprentices shall not work for any Employer who is not in contractual relations with the Union or any other District Council or Local Union affiliated with the Brotherhood, it being understood that Journeymen may work for City, County, State or Federal Government Agencies at the prevailing rate of wages and hours. Contractual relations, as used in this Section, shall mean a written agreement containing all of the provisions of this Trade Agreement. The Employers recognizing the right of members of the Union to exercise their constitutional rights not to work with non-Union journeymen, and any such refusal to work, shall not constitute a breach of this agreement. No Journeyman nor apprentice shall seek employment through a commercial employment agency, nor shall any Employer use the services of a commercial agency for hiring Journeymen or Apprentices.

(C). All out of State contractors must sign application forms for voluntary coverage under Section No. 562 of the New York State Unemployment Insurance Law and employer's application D. B. 135 for voluntary coverage

* * * * *

SECTION 13. Should the Journeymen and Apprentices be retained on an out of town job and be required to stay over night,

provided the man does stay overnight, Employer shall pay his board and lodging for such period.

SECTION 14. CHARGEMEN: Whenever there are four or more Journeymen on a job, one of their number shall be a Chargemen, who shall be selected by the Employer. The said Chargeman shall receive for his services one (1) hour's pay per day in addition to his regular wages.

SECTION 15(A). On each and every job, the Union shall have the right to designate a Job Steward. Chargemen may not be Stewards.

(B). The duty of each Steward shall consist of examining the dues books and cards of Journeymen and Apprentices on the job and enforcing Trade Agreement conditions. A Steward shall perform his work as a Journeyman. Whenever a Steward has been designated for a particular job and the Employer retains such Steward on a separate job as a Journeyman, such Steward shall be reassigned to the original job by such Employer to act as Steward whenever work shall be resumed on such original job.

(C). The Steward shall not be dismissed or discriminated against for enforcing Trade Agreement conditions nor shall he be discharged or removed unless, and until, the Employer shall have first appeared before a meeting of the Joint Trade Board (If the Employer be a member of the Association) and show cause to justify such removal and the Executive Board of this Union shall have designated another to act in his place and stead; but such action shall not affect his right to remain on the job as a Journeyman. If the Employer be not a member of the Association then the Steward shall not be dismissed nor discriminated against for enforcing Trade Agreement conditions, nor shall he be discharged or removed unless and until the Employee shall have first appeared before a meeting of the Executive Board of the Union and show cause to justify such removal

and the said Board shall have designated another to act in his place and stead; but such action shall not affect his right to remain on the job as a Journeyman.

SECTION 16(A). The Employer shall employ one (1) Apprentice for every five (5) Journeymen or in such other ratios as the parties may mutually agree upon in each shop and hire additional apprentices in the proper * * *

* * * * *

GENERAL COUNSEL'S EXHIBIT NO. 5

LOCAL UNION 798

NASSAU COUNTY

PROPOSALS FOR TRADE AGREEMENT

- (1) One year Agreement.
- (2) Increase in Wages \$2.00 per hour.
- (3) Stewards to be appointed on all jobs from the Union Office from the unemployed.
- (4) Extra hours pay for all work over 18 feet.
- (5) Trustees for the Insurance, Vacation & Pension Funds, Three L. U. 798 -- Master Painters, One -- Gypsum Drywall, One -- Independent One.
- (6) 5 Cents per hour be allocated to Ins. & Welfare to purchase additional Life Insurance of \$2,000.00.
- (7) That all Employers pay full amount into all Funds for Apprentices.
- (8) The elimination of all shops and the creation of a hiring hall where all members who are out of a job will be sent out from a list. The Employer will only have the right to have a foreman.
- (9) Employer to contribute 10 cents per hour to Administrative Dues check off. Employer to remit these monies to the Local Union.
- (10) Employer to pay Twenty cents per hour worked to the Painters Union and Industry National Pension Plan.
- (11) Section 6 B The Trust Agreement Section 10A Shall be changed to read on all voting a majority vote shall prevail.
- (12) Section 23A Fee for investigation of Spray, shall be increased to \$50.00.

(13) Upon signing the Trade Agreement or Letter of Compliance the Employer shall pay the sum of \$50.00. Payment to Joint Apprentice Fund the sum shall be \$25.00 per year.

(14) Any Employer required by this Article to pay the percentage contributions of the gross wages payable to his Journeymen and registered Apprentices for the payroll period immediately preceding, who fails to pay such percentage contributions within two weeks of the date prescribed for their payment shall pay to the Trustees as liquidated damages the sum of 10% of the required percentage contributions in addition to the required percentage contributions. If any Employer during any calendar year has failed to pay such contribution within the prescribed date for more than a total of five weeks and not more than ten weeks, the liquidated damages for such delinquency shall be 20% of the required percentage contributions. If the total is more than ten weeks the liquidated damages shall be 30%. Any Employer who has been delinquent a total of more than ten weeks, then the Employer is deemed to have been guilty of having violated the payment wages clause and is subject to all liquidated damages implicit in such violation.

Any Employer who fails to comply with the preceding paragraph shall be cited to appear before the Joint Trade Board which may, on a finding, in its discretion, impose such liquidated damages as it deems appropriate, aside from and in addition to the liquidated damages provided for above.

(15) All stewards for all jobs to be designated from the Union Hall from the ranks of the unemployed members. / Stewards to be designated on all jobs where any member has been employed for a period of (1) year. The said job to include the race track / Dept. Stores / Colleges or any other job that has a contract or stipulation or any other agreement with L. U. 798. This is to be enforced by L. U. 798.

(16) L. U. 798 shall establish a promotional fund. This fund is to be used for the best interests of all the members of L. U. 798. As the L. U. shall decide.

(17) The L. U. shall negotiate in our contract for a clause whereby every member who shall become unemployed shall be eligible to get \$25.00 weekly for a period of (12) weeks. His unemployment book or unemployment check shall be proof of his unemployment. If adopted, plan will be submitted to cover this program.

(18) To give every member an equal employment opportunity; the L. U. shall establish a hiring hall thru negotiations. Rules to govern the hiring hall shall be set up by the L. U.

(19) No Employer shall have the right to close any job by stopping the said job unless he notifies the L. U. and states the reason why.

(20) The Trustees of the Welfare Fund shall purchase additional coverage (NAMELY) A policy whereby any member working at the Trade should become sick; have an accident or be unable to work, he shall receive at least \$25.00 weekly while unable to work. This is to be reviewed periodically by the Trustees and the L. U. for improvement of the said coverage.

GENERAL COUNSEL'S EXHIBIT NO. 6

PROPOSALS SUBMITTED BY L. U. 798 Dec. 13th/72

- (1) year agreement
 - \$1.25 per hour increase
- (2a) Stewards to appointed on all jobs from the Union Office.
- (2b) Extra hours pay for all work over 18 feet.
- (3) Trustees on the Insurance, Vacation, Pension and all other funds, from the Union; (I) one of the Master Painters & (I) from Gypsum Drywall and (I) Independent.

That the negotiating committee be given the following information pertaining to the Promotional Fund.

- (1) How much has been collected since it was established.
 - (2) How was the money collected and if used how was it used.
 - (3) We would like copies of the said Trust Agreement in regards to this fund.
 - (4) We the Union want to sit as Trustees equally as the contractors to this fund.
-

GENERAL COUNSEL'S EXHIBIT NO. 7

MEMORANDUM OF AGREEMENT made April 30, 1973 between the NASSAU DIVISION OF THE MASTER PAINTERS ASSOCIATION OF NASSAU-SUFFOLK COUNTIES, INC., and the NASSAU DIVISION OF THE GYPSUM DRY WALL CONTRACTORS OF NEW YORK, INC., herein called Associations, and LOCAL UNION 798 of NASSAU COUNTY, NEW YORK.

The following items constitute the amendments and modifications to the collective bargaining agreement entered into between the parties the 1st day of April, 1970 and which expired on the 31st day of March, 1973.

1. The term of the new collective bargaining agreement shall be from April 1, 1973 to March 31, 1976.

2. Wage increases:

4/1/73 to 3/31/74 75¢

4/1/74 to 3/31/75 75¢

4/1/75 to 3/31/76 75¢

A) The above increases constitute the total economic package for the period 4/1/73 to 3/31/76 (wages and fringe benefits) The Union may on ninety (90) day written notice allocate any of the annual increase to a presently constituted jointly administered Tax Exempt Fund. On failure to so notify, the increase shall be allocated into wages only.

B) The above economic increases are to be maintained in contractors escrow accounts pending approval of the economic adjustment by the Craft Board and/or CISC.

C) Until approval or disapproval of the economic adjustments by the Craft Board and/or CISC, the contractors shall continue to pay the wage rate and fringe benefits prevailing immediately prior to March 31, 1973.

3. The parties agree that a wage scale of 75% of the then prevailing wages and unlimited use of tools shall apply to all unorganized work.

4. Item 27A is amended so as to delete the same in its entirety. Item 27B to become Item 27A adding to the first sentence a certified cash deposit of \$2,000.00 or a surety bond in the sum of \$2,000.00

5. There shall be no cessation of work by either party to the collective bargaining agreement in the event of a labor dispute except for the failure to pay current wages and/or fringe benefit contributions or in the event that a failure of a party to comply with a decision of the Joint Trade Board or any applicable Appellate decision thereafter rendered concerning such dispute. These provisions shall apply during the term of this agreement.

6. The parties agree that the final proposals by either party to modify, amend, or delete a provision of the collective bargaining agreement shall be made in writing no later than fifteen (15) days prior to the expiration of the then collective bargaining agreement.

7. Section 19B of the collective bargaining agreement which expired on 3/31/73 shall be modified so as to delete reference to Sections 126 and 97 of the Constitution of the International Brotherhood of Painters and Allied Trades and in its place set forth in the new collective bargaining agreement the entire text of Sections 126 and 97.

8. Section 16c is amended to provide that the sum of fifteen (\$15.00) dollars shall be paid to the Joint Apprentice Training Committee during each year of this agreement.

9. That in addition the employer agrees to pay the sum of fifty (\$50.00) dollars upon the signing of the agreement and/or a letter of compliance to defray the expense of publication. This fee to be paid only once.

10. The Associations shall sign on behalf of their members and each Employer Association shall submit to the Union at the time of the signing those members who are bound by the terms of said agreement.

11. The Union, through the business representative, shall designate a qualified journeyman as a steward on each and every job and the employer shall designate a foreman on each and every job subject to the following:

a) There shall be a one-year trial basis on the steward program subject to reopening at the expiration of the first-year of this agreement; the re-opening limited to this item only.

b) The Joint Trade Board to hear and determine all grievances on the steward issue.

c) No work stoppage pending disputes on the steward issue.

d) One man jobs to be exempt from the steward's program subject to investigation by the business representative.

That except as to the foregoing, all of the terms and conditions as contained in the previous collective bargaining agreement dated April 1, 1970 continues in full force and effect.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals the day and year first above written.

Master Painters Association
of Nassau-Suffolk Counties, Inc.

By: /s/ Anthony C. Forgione

Gypsum Dry Wall Contractors of
New York, Inc.

By: /s/ Arthur Olsen, Pres.

Local Union 798 of Nassau
County, New York

By: /s/ Walt Schmidt

/s/ John A. Blusonis
/s/ Alex

GENERAL COUNSEL's EXHIBIT NO. 8

*GC 98
11/26/73*
Nassau Painters Vote to Strike

Mineola—Nassau County Painters Local 978 rejected yesterday a contract offer from the Master Painters Association and Gypsum Dry Wall Associates and voted, 170 to 35, to strike tomorrow.

John Blusonis, recording secretary of the 626-member union, said yesterday that the contract offer was turned down because "we feel stewards should be placed on every job and appointed from the ranks of the unemployed in the union office." Blusonis also said the union felt that the proposed contract did not offer enough money, but he declined to be more specific. Officials from the contractors could not be reached for comment.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th REGION

In the Matter of:

LOCAL UNION 798 OF NASSAU COUNTY,
 NEW YORK: BROTHERHOOD OF PAINTERS
 AND ALLIED TRADES, AFL-CIO,

and

NASSAU DIVISION OF THE MASTER
 PAINTERS ASSOCIATION OF NASSAU -
 SUFFOLK COUNTIES, INC., and NASSAU
 DIVISIONS OF THE GYPSUM WALL
 CONTRACTORS, INC.

* Case No. 29-CB-1495

Courtroom, Third Floor
 National Labor Relations Board,
 16 Court Street,
 Brooklyn, New York,
 Monday, November 26, 1973.

The above-entitled matter came on for hearing, pursuant
 to notice, at 11:15 o'clock, a. m.

BEFORE:

THOMAS S. WILSON, Administrative Law Judge

APPEARANCES:

HOWARD EDELMAN, Esq.,

Brooklyn, New York, appearing
 on behalf of the Counsel for
 the General Counsel.

ERWIN POPKIN, Esq.,

Law firm of Popkin, Barnett &
 Lonorof, 1399 Franklin Avenue,
 Garden City, New York, appearing
 on behalf of the Petitioners.

APPEARANCES (Continued)

ERNEST FLEISCHMAN, Esq.,
 Law firm of Delson & Gordon,
 230 Park Avenue, New York, New
 York 10017, appearing on behalf
 of the Respondent.

* * * * *

6

ARTHUR OLSEN

was called as a witness by and on behalf of the National Labor
 Counsel, and, having been first duly sworn, was examined and
 testified as follows:

7

JUDGE WILSON: Would you state your full name and spell
 your last name for us, please?

THE WITNESS: Arthur Olsen, O-l-s-e-n.

JUDGE WILSON: Thank you.

DIRECT EXAMINATION

Q. (By Mr. Edelman) Mr. Olsen, are you employed?

A. Yes.

Q. What is the name of your employer? A. Finished
 Rite Construction Corp.

Q. What is your position with Finished Rite? A. President.

Q. Is that a corporation? A. Yes.

Q. New York corporation? A. That's right.

Q. What type of operation is Finished Rite engaged in?
 A. Primarily the drywall business.

Q. Can you give us an idea exactly what drywall business
 is? A. Installation of drywall is the erection of walls in office
 buildings, houses, schools.

Q. Is that type of wall the plaster walls with two cardboards on
 either side of them that are erected? A. Plaster wallboard.

MR. EDELMAN: I apologize for my description.

8

MR. PRACHT: Good description. It looks just like what you said.

Q. (By Mr. Edelman) Mr. Olsen, is Finished Rite a member of any employer association? A. Yes.

Q. And the name of that association is? A. Is the Gypsum Drywall Association.

Q. Do you hold any position with this association? A. Yes. I'm the president.

Q. Is this a corporation? A. Yes.

Q. A New York corporation, I assume? A. Yes.

MR. EDELMAN: Just for clarity, Your Honor, I would like, if we can, to get a stipulation as to the other members of the Drywall Association so that the record will reflect completely those members of the association.

JUDGE WILSON: All right.

MR. EDELMAN: Perhaps, Mr. Fleischman, I can show this to you and if it is accurate maybe we can stipulate that in.

MR. FLEISCHMAN: Could I ask a question or two on voir dire?

JUDGE WILSON: Sure.

VOIR DIRE EXAMINATION

9

Q. (By Mr. Fleischman) Mr. Olsen, what is the date of this list? A. I'd have to look at the list.

MR. EDELMAN: I will show him a copy.

THE WITNESS: This list is dated 1/12/73.

Q. (By Mr. Fleischman) Would this be the same list or would you have the same names as of April 1973 -- A. Yes.

Q. -- and as of the present time? A. Yes.

Q. Are there any additions to this list subsequent to January 12, 1973? A. No.

Q. And none of the firms listed have dropped out of the association since January 1973? A. No.

MR. FLEISCHMAN: I will so stipulate.

MR. EDELMAN: Very well.

JUDGE WILSON: All right, we will have that marked as General Counsel's No. 2 and it will be admitted on the basis of the stipulation.

(The document above-referred to was marked General Counsel's Exhibit No. 2 for identification and admitted into evidence.)

* * * * *

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FURTHER DIRECT EXAMINATION

Q. (By Mr. Edelman) Mr. Olsen, the members of the Drywall Association that are contained in General Counsel's Exhibit 2, is their business similar to your own? A. Yes, it is.

Q. Are you familiar with an association called the Painters Association? A. Yes, I am.

* * * * *

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JUDGE WILSON: So we will have that list marked as General Counsel's Exhibit 3 and admitted in evidence.

(The document above-referred to was marked General Counsel's Exhibit No. 3 for identification and admitted in evidence.)

JUDGE WILSON: All right, Mr. General Counsel.

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Q. (By Mr. Edelman) Mr. Olsen, do the Painting Association and the Drywall Association engaged in collective bargaining jointly? A. Yes.

Q. With Local 798? A. Yes, they do.

Q. How long have the associations negotiated with Local 798? A. To the best of my knowledge, 10 years.

Q. And the most recent contract -- not talking about the present one but there was a contract in 1970, is that correct?

A. That's right.

Q. And it expired in 1973? A. That's correct.

MR. FLEISCHMAN: We admitted that.

MR. EDELMAN: Yes. I would just like to get that into evidence, too. Perhaps we can get a stipulation on that.

MR. FLEISCHMAN: I will stipulate that this is the agreement between Local 798 and the two associations, excluding some writing from the inside cover.

JUDGE WILSON: Merely the printing.

MR. EDELMAN: The printed portion.

JUDGE WILSON: All right, that will be marked as General Counsel's Exhibit 4 and admitted in evidence.

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(The document above-referred to was marked General Counsel's Exhibit No. 4 for identification and admitted in evidence.)

Q. (By Mr. Edelman) Mr. Olsen, with respect to your own Finish Rite Corporation, do you employ a number of employees on a regular year-round basis? A. Yes, I do.

Q. How many employees do you so employ? A. Between 30 and 50.

Q. Are these employees represented by Local 798? A. Some of them are.

Q. How many would be represented by 798? A. Two.

Q. Two of them?

THE WITNESS: (Nodding.)

Q. There would be a regular complement of two that you have that are represented by 798? A. Yes.

Q. Are you familiar with the employment complement and the practices of other members of the Drywall Association?

A. Excuse me?

Q. Are you familiar with the operations, the employment complement generally of other members of the Drywall Association?

A. Some of them employ more and some of them employ less men than I do. I couldn't state the --

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Q. Without the numbers, you are aware -- how many, for example --

MR. FLEISCHMAN: I object.

JUDGE WILSON: I think I will overrule that objection. If he knows. It does not sound as though he knows.

Q. (By Mr. Edelman) Well, to your best knowledge, if you know. A. How many members of 798 do my association members employ, is that the question?

Q. No, a range. In other words, if you can give me an idea as to, well, such and such an employer might hire so many employees on a regular basis and so and so might employ so many, just to get an idea of the sizes of the employment for the members of the association.

MR. FLEISCHMAN: Are you talking about members of the local?

MR. EDELMAN: The drywall local.

MR. FLEISCHMAN: People within the jurisdiction of Local 798?

MR. EDELMAN: Yes.

Q. (By Mr. Edelman) If you know. If the question is not capable of being answered by you, just state it and I will withdraw it and give another one. A. I would say these members employ between 10 and 20 members of 798.

18 Q. On a year-round basis? A. Yes. That's to the best of my knowledge.

Q. Right. With respect to conditions as they existed on the 1970-1973 contract, can you explain exactly how you went about hiring any new employees that you have to use? Call them unit employees meaning represented by 798. A. If Finished Rite wanted to hire a new employee and he was in Local 798's union, we would either call up the union hall to get a man or we would call up a fellow employer and see if he had a man to give us.

MR. FLEISCHMAN: May I hear that last answer?

(The last answer read by the reporter.)

Q. (By Mr. Edelman) Were there ever any times where you would contact an employee directly? A. Yes, we would but most of the time they were working so, you know, we would go to the union or go to the other employer.

Q. Was this the practice as well with other members of the association? A. Yes, I believe so.

Q. You state you would either call the union or call another employer. Were you required to do --

MR. FLEISCHMAN: I object, I'm sorry.

JUDGE WILSON: The contract will speak for that.

MR. EDELMAN: Very well. Withdrawn.

19 Q. (By Mr. Edelman) Now, with respect to shop stewards, how were shop stewards selected with respect to the Drywall Association?

JUDGE WILSON: This is under the 1973 contract?

MR. EDELMAN: Yes.

JUDGE WILSON: Doesn't the contract speak for itself?

MR. EDELMAN: It does, Your Honor. If I can just refer you then to the clause in that contract so that on reading the record you won't have to go through it, I direct Your Honor's attention to Section 15A of the contract which refers to the selection of shop stewards.

JUDGE WILSON: All right.

Q. (By Mr. Edelman) Did there come a time, Mr. Olsen, when the 1970-1973 contract was on the point of expiration and did there come a time when negotiations began for a new contract?

A. Yes, there did.

Q. Can you give me an idea exactly over what period of time negotiations were held? A. From December 1972 to April 1973.

Q. Would that be on and including April 30th or April 29, 1973? A. Yes.

Q. Did you take part in these negotiations? A. Yes, I did.

20 Q. Did you have any position with the negotiating committee?

A. I was there representing the Drywall industry.

Q. Had you taken part in the 1970 negotiation as well?

A. Excuse me?

Q. The 1970 negotiation as well? A. Yes, I had.

Q. Now, between December 13, and April 30, about how many negotiation sessions would you say were held? A. About 15.

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MR. EDELMAN: Your Honor, in an off-the-record discussion the parties have stipulated that the negotiation sessions were held

on the 13th of December, 1972 and, in 1973, on January 3, 23, February 13, 21, March 1, 13, 20, 27, 29, April 6, 12, 26, 30 and June 7.

JUDGE WILSON: Agreeable?

MR. FLEISCHMAN: Agreed.

JUDGE WILSON: Mr. Popkin, correct?

MR. POPKIN: It seems to be, Your Honor.

JUDGE WILSON: All right, the stipulation will be received.

Q. (By Mr. Edelman) Mr. Olsen, were you present at all of these sessions? A. Not all of them; about 85 percent.

Q. Do you recall which sessions you were not present at? A. June 7.

Q. Were you present at the March 27-29 session? A. Yes, I was.

Q. Were you present at the April sessions? A. Yes, the majority of them.

Q. Were you present on April 26 and 30, the last session and next to the last session? A. Yes, I was.

22 Q. Very briefly, can you describe who was present at these negotiation sessions, not necessarily all of them but who represented the negotiating team for the associations? A. For the Drywall Association it was myself, Charlie Valdini, Joe Cieslewicz, Don Stephan, our attorney Erwin Popkin.

For the painters it was Mr. Price, Mr. Tarakan. There was about four members or five members of the painters. I can't recall their names.

Q. How about Hymie Wiedenbaum; do you recall that name? A. Yes. Mr. Forgione.

Q. Who was present, by the way, for Local 798? A. Mr. Morelli, Mr. Pracht, Mr. Blusonis, Mr. Schmidt -- Walter Schmidt, Mr. Cooperman. That's all I can recall.

Q. Were there any other parties present at any of these negotiations? A. Yes, there come a time in March where the Federal mediators became a part of the negotiations.

Q. Do you recall the names of the mediators? A. Mr. Swanson was one.

Q. Robert Swanson. A. Yes.

23 Q. Do you recall the name of the other? A. No, I don't.

Q. If I tell you the name J. J. Kriedler (Phonetic), does that ring a bell? A. No.

Q. There was another mediator, though? A. Yes, there was another mediator.

Q. Where were these sessions held? A. The beginning session was held at the Painters Pension and Welfare Office and, later on, they moved down to the Federal Mediator's office down in Hempstead.

Q. Did there come a time early in the negotiations when the union presented you with a list of its demands? A. Yes.

MR. EDELMAN: Can we mark this General Counsel's Exhibit 5, please, for identification?

(The document above-referred to was marked General Counsel's Exhibit No. 5 for identification.)

Q. (By Mr. Edelman) Do you recognize that? A. Yes, this is the demand.

Q. They submitted those demands to you? A. Yes.

Q. There is a date on there, 1/23/73. Is that the date it was submitted? A. I would think so. I didn't write that on there.

Q. Was that submitted to you at the negotiations?

24 A. Yes.

MR. EDELMAN: I'd like to have this received into evidence, if there is no objection.

JUDGE WILSON: Any objection?

MR. FLEISCHMAN: I have no objection provided the date is stricken because he doesn't know if that was the date.

MR. EDELMAN: All right, I have no objection, either.

JUDGE WILSON: All right, it will be admitted with that restriction.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 5, was received in evidence.)

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25 Q. (By Mr. Edelman) Mr. Olsen, at the time these demands were submitted do you recall during the early negotiations, the December or January negotiations, whether there was any discussion at all with respect to demand No. 15? A. Yes. When they were submitted, the employers objected very strongly to No. 15. There was objection to all the others, but No. 15 was the basic objection.

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26 Q. (By Mr. Edelman) Now, Mr. Olsen, can you recall what was stated by yourself or other employer members of the association with respect to demand No. 15, the stewards clause?

A. I can only state what I, how I felt about it.

Q. Well, can you state what you stated about it? A. Yes.

Q. All right. A. I felt that the stewards --

JUDGE WILSON: Wait a minute. You are going to tell us now what you said during those negotiations about the stewards clause?

THE WITNESS: Yes.

JUDGE WILSON: All right.

A. (Continuing) I didn't want the steward clause --

MR. FLEISCHMAN: I object.

JUDGE WILSON: I will sustain the objection.

MR. EDELMAN: Just tell us --

JUDGE WILSON: Just tell us what you told those people at the negotiation session.

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THE WITNESS: That's what I was --

JUDGE WILSON: All right, go ahead.

THE WITNESS: At the negotiation meetings I stated I didn't want the shop stewards clause in the agreement because it would force me to put on a man from the union and maybe have to lay off somebody in my own shop from their regular employ.

Q. (By Mr. Edelman) Did any other employers in the association state their position? A. They felt the same way I did. How they stated it, I can't recall.

Q. Did they state it in the same manner, in sum and substance, without -- A. Yes.

Q. Did they so state it? A. Absolutely.

Q. How about members of the Painters Association, did they state their position?

MR. FLEISCHMAN: I object.

A. Yes, they --

JUDGE WILSON: The Painters Association? Overruled.

MR. FLEISCHMAN: It's another --

JUDGE WILSON: Overruled.

MR. FLEISCHMAN: -- association. He doesn't state what meeting, what meetings, who for the painters.

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JUDGE WILSON: That's for cross-examination. I will overrule the objection.

You may answer it.

Q. (By Mr. Edelman) You were present at the meetings with the painters' representatives as well? A. That's right.

Q. And you are talking now about the session, whichever it is, when these demands were first presented to you, is that correct? A. That's correct.

Q. That was in December or January, is that correct? A. December, January or February.

Q. All right now, do you recall the painters stated their position with respect to that particular clause? A. I recall that they felt the same way as the drywall --

MR. FLEISCHMAN: I ask that it be stricken.

JUDGE WILSON: Denied.

Q. (By Mr. Edelman) They so stated their feelings, is that correct? A. That's correct.

MR. FLEISCHMAN: Object.

JUDGE WILSON: Denied.

Q. (By Mr. Edelman) Was the reason why the objections to this clause or were the reasons why --

MR. FLEISCHMAN: I object.

JUDGE WILSON: Wait a minute.

MR. FLEISCHMAN: To the question.

JUDGE WILSON: He hasn't even asked his question yet.

You are a little premature.

Q. (By Mr. Edelman) Were the reasons for the membership's objection to this clause, were they stated during the negotiation?

A. I stated mine before.

Q. Did other employers state theirs as well? A. Yes.

MR. FLEISCHMAN: These are all leading questions. I object to the form of the question.

JUDGE WILSON: Oh, overruled.

Q. (By Mr. Edelman) Do you recall what their positions were, generally?

JUDGE WILSON: What did they say?

THE WITNESS: I don't recall exactly their words.

Q. (By Mr. Edelman) Well, the sum and substance of what they said, then. A. They thought they would be forced to employ a stranger and not be able to keep their complement of their own crew working.

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JUDGE WILSON: Let me ask a question here.

Mr. Olsen, when you were negotiating did you have a spokesman for the Drywall Association?

THE WITNESS: Yes.

JUDGE WILSON: Who was that spokesman?

THE WITNESS: Erwin Popkin.

JUDGE WILSON: And did the Painters Association have a spokesman?

THE WITNESS: Yes. I would think that Erwin Popkin was there representing them also.

JUDGE WILSON: Don't you know who Mr. Popkin was representing?

THE WITNESS: I know he was representing the Drywall industry. I'm not sure whether he was retained and paid by the painters.

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JUDGE WILSON: Did the local union have a spokesman?

THE WITNESS: They had a president there.

JUDGE WILSON: Who did the speaking for the local union?

THE WITNESS: Your Honor, when you go to these negotiation committees, it's -- everybody just yells out and shouts. I can't

say that one guy spoke constantly for the painters or one guy spoke constantly for the drywall industry.

JUDGE WILSON: That's what I wanted to know, whether you had spokesmen or whether you were all talking together.

THE WITNESS: I think we could say that everybody would, in an orderly fashion, if it could be done, speak their mind.

JUDGE WILSON: Okay. All right, Mr. General Counsel.

Q. (By Mr. Edelman) Did any union representative state the union's position as to why they wanted this particular demand?

A. Yes. The union's position at the very beginning was it was going to be a turnover of their men; they were going to be able to take people from their hall that were out of work and put them on jobs as shop stewards.

Q. (By Mr. Edelman) Did they say why they wanted to do

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this? A. I remember once it very strongly being stated that if you had a fellow working 52 weeks and we had a fellow that is unemployed, it's only fair that our man out of employment, our man should be able to go to work and let your man get a little unemployment.

Q. Did the association take any exception to the position as stated by the union? A. I can only say how Finish Rite or myself felt towards this.

Q. When you say felt did you answer the union representative that stated this position for the union? A. Yes.

Q. Can you tell me what you told him? A. I objected to getting a stranger to come out and do my work because I knew the capabilities of the man that I have working for me and I don't know the capabilities or the production of a stranger, and it is very hard to estimate the cost of a job when you are dealing with strangers.

Q. How do you estimate the cost of a job? A. On past performance of my employees.

Q. That's how you frame a bid? A. That's how we estimate future bids, on what my men have done in the past.

33 Q. I see. Was this explained during the course of the negotiations? A. Yes, I explained it.

Q. Did the union take a position with respect to this explanation? A. Yes, they still felt they had the right to send a shop steward to each and every job.

Q. Was all this discussed at this first meeting when the clause was first proposed, whenever it was? A. The shop steward's clause was discussed at each and every meeting.

Q. Would it be fair to say that these positions were exchanged during the first meeting that it was brought up? A. Yes.

Q. And were these same positions brought up by both parties at other negotiations? A. The shop steward's clause was brought up and argued back and forth at every meeting.

Q. Was there any compromise proposal during the period of negotiations during the period before the strike? That would be prior to April 1st.

Were there any compromise proposals in connection with demand No. 15 submitted by the Union?

In other words, did they offer to modify the demand? A. You are asking me if the union asked to modify their demands?

34 Q. Right. A. Up to 3/29?

Q. Right. A. No, they did not.

JUDGE WILSON: Up to 3/29? What do you mean?

MR. EDELMAN: March 29th, Your Honor. That would be the last session before the strike.

JUDGE WILSON: Oh, March 29th.

Q. (By Mr. Edelman) Did the employer offer any modifications or propose any modifications between December and March 29? A. Yes.

Q. What modifications were proposed by the employer?
A. The employer did not want to take the shop steward as the first man on the job, so he --

Q. Why was that? Was that stated? A. It was stated by the employer that he didn't want to take the shop steward --

Q. Was the reason stated? A. Yes, it was, the same reason that I have stated before.

Q. Can you state it again? A. We did not know the qualifications of this man. We did not know his productivity, and we might be forced to lay off somebody in our own employ to hire a new man.

35 Q. All right, what was the union's response to the modification proposed by the employer's association? A. I think, first, I have to tell you the modifications. I never got that through.

The employees offered, instead of the union to send us the first man to be the shop steward, let the shop steward be the fifth man sent by the employee -- by the union to the employer. That way the employees felt that --

Q. You mean the employers? A. The employers -- excuse me -- felt this man, being the fifth man on the job, we would still be able to estimate our work because he would only reflect 20 percent of our labor that's being done in the field.

He would only you know affect 20 percent of our cost of our productivity.

Q. Wouldn't he in any event only reflect 20 percent, whether No. 1 or No. 5? A. If he was No. 1 he would reflect a hundred percent.

Q. All right, what was the union's position with respect to this? A. The shop steward had to be the first man.

Q. Did the employer make any other proposed modifications between December and March 29? A. Yes, the employee reduced from 5 to let the shop steward be the fifth man to now let the shop steward be the third man, feeling that now he is only, he is going to affect us 33 percent because he would be one-third of our labor.

Q. What was the union's position on that? A. They wanted him to be the first man.

Q. These were positions that were taken by the employer and by the union during the negotiations between December and March 29, before the strike? A. That's right.

Q. Prior to the strike? A. That's right.

Q. Okay now, were you present at the March 29th meeting? A. Yes, I was.

Q. Can you tell me about what time that took place? A. To the best of my recollection I think it was four o'clock in the afternoon.

Q. About how long was the meeting? A. Nine hours, about.

Q. That was a long one? A. Yes.

Q. Was the shop steward's clause discussed at this meeting? A. Yes, it was.

Q. If you are able to estimate the time spent on the shop steward's clause, could you so estimate? A. I would guess that half of the time spent at this last meeting was on the shop steward's clause.

Q. What about the other demands in the contract, at the 3/29 session, was there any discussion as to the other demands? A. Yes,

at the 3/29 session these lists of 20 demands that, that had been submitted, were all resolved with the, with three of them being not resolved.

Q. Well, what three would you say were not resolved?

A. The length of the agreement, wages per hour and the shop steward's clause.

Q. The others were resolved one way or the other, you say? A. Well, resolved or were so minor that I know they could have been resolved.

Q. Now, was there any wage offer made by either party at this 3/29 session? A. Yes. The union made offers.

Q. What was the union's offer? A. I don't recall the dollars and cents.

Q. Well -- go ahead. A. But I do recall that the union on 3/29 did come back with a package in dollars and cents that did go for three years.

Q. In other words, they proposed something for one year, two years and three years? A. That's right.

38 Q. What did the employer state with respect to the union's wage proposal if anything? A. The employer stated quite naturally that the wages were too high but I have to say that the employer really was not worried about the union's demand on wages because we have a Wage Stabilization Board in Washington and no matter what wages they have asked for we knew that it would have to go down to Washington for approval.

So wages was not in my knowledge a big factor of the employers associations? A. Yes, it was.

Q. In other words, you discussed it and this is the result you reached? A. Yes, we knew that they would only get what Washington was going to allow them.

Q. And you say the union's proposal after 3/29 session was couched in terms of wages spread over three years?

A. Yes, and when they did that we knew they would settle eventually for a three-year agreement.

We were not worried about the wages because we knew it would be determined down in Washington. The only thing that I can say caused this strike was 15.

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Q. The shop steward clause? A. Yes.

Q. In any event, you discussed the shop steward's clause at the 3/29 session? A. Yes, we did.

Q. What was discussed with respect to the shop steward's clause? Tell me what the union officials and the company officials said, if you can recall. A. The employers made these modifications to try to get, reach some kind of agreement; the modifications being the steward being the fifth man on the job, then down to the third man on the job, and the union would accept none of them, and we had a strike.

Q. I take it then, that the March 29th session, the demand 15 was unresolved? A. That's right, 15. 1 and 2 were unresolved.

Q. All right now, did there come a time when there was a strike throughout the membership of the Painters Association and the Drywall Association? A. Yes, there was a strike.

Q. How wide was the strike? Were all employees --

JUDGE WILSON: What was the date of the strike?

THE WITNESS: April 1, 1973.

JUDGE WILSON: All right.

Q. (By Mr. Edelman) Did you know in advance that there was going to be this strike? Were you informed of the possibility

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that there was going to be this strike? A. I think we knew there was going to be a strike on March 29, 1973.

Q. How did you know that? A. Because we didn't agree to the shop steward's clause and the one-year agreement and the wages per hour and the meeting broke up at one o'clock in the morning.

Q. Did anybody indicate that there would be a strike?
A. Yes, the representatives of the local union told us that if they didn't get the shop steward's clause there was going to be a strike.

Q. Which particular representative? Do you recall any particular representative making this statement? A. I think it was a statement made by all of the representatives at one time or another.

Q. At this meeting? A. At just about every meeting.

Q. What was the statement? A. That unless they got the shop steward's clause in their agreement we would have a strike.

Q. And you did have the strike beginning April 1st, is that correct? A. That's correct.

Q. That was an industry-wide strike at least covering the members of both associations? A. Covering the jurisdiction of 798.

Q. Insofar as the members of both associations go?
A. That's right.

Q. How long did this strike last? A. Approximately 30 days.

Q. Were negotiations held during the strike? A. Yes, they were.

Q. Were you present at these April negotiations?
A. Yes, I was.

Q. Now, with respect to the April 6th negotiation were you present at that one? A. I can't recall the date. If it was April 6th, if there was a meeting on April the 6th, I was there.

Q. Do you recall where it was held? A. At the Federal Mediator's office.

Q. I take it all the April negotiations were held there?
A. That's right except for the one in April 30 or 29th was held at Erwin's office.

Q. Mr. Popkin's office, your attorney? A. That's right.

Q. With respect to the first meeting in April, April 6, do you recall how long that meeting was? A. I recall one of the early meetings in April as lasting about a half-hour.

42 Q. And do you recall what was discussed at that early meeting in April? A. Yes. We all sat down in a room and the employers were asked if they had changed their view on the shop steward's clause and when we stated no the union was asked if they changed their view and when they stated no, whack, that ended the meeting.

Q. Were wages discussed at this meeting or the time of the contract? A. I don't think wages were discussed at all at this meeting.

Q. With respect to the next meeting that was held in April, were you present at that one as well? A. I was present at every meeting in April.

Q. All right, now, the second meeting in April, about how long was that? A. I think this was a lengthy meeting.

Q. About how many hours. A. I'd say four, five hours.

Q. Can you recall what was discussed at this meeting?
A. All the, all the proposals were gone over, the union's proposal to the employers, and everything was either rejected or accepted or withdrawn with the exception of the length of the agreement, the wages and the shop steward clause.

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Q. Was there a discussion on the shop steward's clause at this session? A. Yes, there was.

Q. How much of the meeting would you say was spent on the shop steward's clause discussion? A. It got to be that the whole meeting was on the shop steward's clause.

Q. Was there any discussion, any lengthy discussion of or substantial discussion of the wages and term of the agreement? A. There was always discussion of wages and terms of the agreement, but I feel both the union and the employers knew that the wage stabilization down in Washington was going to govern the salaries so I really felt that everybody was just wasting time when that was brought up in negotiation.

Q. With respect to the wage proposals that were brought up, how were they brought up, in connection with what length or term of contract? A. The employers always brought them up as the length of three years. There were times when the union would bring them up as a one-year length and there were other times they would bring them up as a three-years length.

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Q. What was the discussion in connection with the shop steward's clause at this second session in April? A. The union still felt that they wanted to appoint the shop steward to be the first man on the job.

Q. Was their position in any way different than they had taken at prior negotiations? A. No.

Q. What about the employer's position, what was the employer's position at the second meeting? A. The employees went from five to three and when it got down to one they would not give in to it.

Q. Let's talk about the third meeting in April. Were you present at that? A. Yes, I was.

Q. Was that a long one or a short one? A. I don't recall.

Q. Do you recall what was discussed at this meeting?
A. The shop stewards.

Q. Was anything else discussed at this meeting?
A. Yes, again probably wages and length of the agreement.

Q. What were the positions taken with respect to the steward's clause at this meeting? A. The union still wanted the steward to be the first man. The employees were willing to accept him to be the third man and that's as far as we could get.

Q. Now, with respect to the last meeting in April were you present at that? A. Yes, I was.

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Q. Was this a long meeting or a short meeting?
A. About five hours.

Q. Can you tell me generally what took place at that meeting? A. Yes. We came to an agreement on all --

Q. Can you describe what conversations transpired leading up to this agreement? A. We agreed on a three-year agreement. We agreed to give the union 75 cents per hour raise for each of the next three years and the employers gave in to the shop steward's clause in the contract, with a few modifications.

Q. Can we discuss how these modifications were arrived at?

In other words, what did the union say, what did the employer say and how did they finally come about? A. The employees felt we had to have some modifications in, so in a caucus held with our attorney and the other association, we discussed the modifications and got them inserted into our contract.

Q. What modifications did you discuss? A. That one-man jobs would be exempt from the shop steward's clause provided the

union went down and investigated the job and they so deemed it a one-man job; that the shop steward would be a qualified journey-man sent to us to help us be able to estimate our production and
 46 that this clause would be able -- would be open to renegotiations in April of 1974.

Q. Were these demands presented to the union or this proposal presented to the union? A. Yes, it was.

Q. Did the union take a position with respect to it?
 A. They accepted those three clauses that I know of. I don't recall if there were four or five, maybe they didn't accept four and five, but I know these three were accepted by the union.

Q. Was there a considerable or not considerable discussion of the shop steward's clause at this particular session? A. There was considerable time spent on the shop steward's clause.

Q. The agreement that was reached that was finally agreed to --

MR. EDELMAN: I'd like to have this marked General Counsel's Exhibit 6.

JUDGE WILSON: No, that will be 7.

(The document above-referred to was marked General Counsel's Exhibit No. 7 for identification.)

Q. (By Mr. Edelman) Have you ever seen that document?
 A. Yes.

Q. Can you tell me what that is? A. This is the agreement that we finally resolved to.

47 Q. Directing your attention specifically to paragraph 11, I ask you to look it over and tell me if you recognize that. A. Yes. This is the steward clause as it is now in our contract.

Q. Right. Is that the clause as it was agreed on at the last meeting of April? A. Yes.

MR. EDELMAN: I propose to have this document admitted into evidence at this time. I will show a copy to --

MR. FLEISCHMAN: No objection.

JUDGE WILSON: It will be admitted.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 7, was received in evidence.)

MR. FLEISCHMAN: May I just see it?

MR. EDELMAN: Yes, sir.

Your Honor, I would just like to comment that in the course of Mr. Olsen's testimony from time to time he refers to employers as employees.

JUDGE WILSON: I noted that.

MR. EDELMAN: Yes.

Q. (By Mr. Edelman) Were the mediators present at these April negotiations, by the way? A. Yes, they were.

48 Q. Now, when the agreement was reached, was there any discussion as to termination of the strike that was in progress?

A. To the best of my recollection, we came to an agreement on a Friday night or a Thursday night and the union representative had to go back to their people on the following day and we would go back to work the next working day.

Q. You said they were going back to their people. Did they indicate the purpose of going back to their people? A. Yes. They had to go back to their people to tell them they agreed to a three-year agreement, the wages per hour, the shop stewards, and sort of tell them on these 20 demands what they have got and what they didn't get.

Q. I see.

For what purpose? A. To let their membership vote on whether to continue to strike or go back to work.

Q. Did the employees go back to work? A. The first working day in June, I would think.

Q. June, or was that in May? A. Oh, excuse me, in May.

49 Q. Were you present when this agreement was signed?
A. Yes, I was.

Q. Was that at this session or was that at a subsequent session? A. It was at a subsequent session. I don't believe it was signed that night. I think it was --

Q. Did that take place while the strike was still in progress?
A. No, I think the strike was settled, but we just hadn't signed an agreement but had reached agreement on everything, and then we met while our men were back to work and signed this.

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CROSS EXAMINATION

Q. (By Mr. Fleischman) Mr. Olsen, you testified that you employed 30 to 50 men year round and that two of the men were from Local 798 or within the jurisdiction of Local 798; am I correct?

A. Yes.

Q. Are they tapers? A. Yes, they are.

Q. How do you pay tapers, by the hour or piecework?

A. By the hour.

Q. Now, the balance of the men, that is anywhere from 28 to 48, what categories are they in? A. Tapers from another union or carpenters from various unions.

Q. Now, you also testified that the other members of your association, all together, employed between 10 to 20 men who work within the jurisdiction of Local 798? A. I approximated that.

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Q. Right. Now, do any of those other employers employ five or more tapers on a regular basis? A. I can't --

Q. Well, do you have an idea? A. I would say one or two of them may employ more than five tapers.

Q. And the others would employ fewer than five tapers? A. Yes.

Q. Do you have the largest working force of any of the employers in your association? A. No, I don't think so.

Q. You are up near the top, right? A. Yes.

Q. So that if a union contract provided that the fifth man on the job shall be sent by the union in almost all cases that would not affect the members of your trade association, it would only affect those that have more than five tapers; am I correct?

It wouldn't affect you, would it, if you only had two tapers?

A. If I decided to do a big job in Nassau County it would affect me.

Q. Right, but on the ordinary job it would not? A. If it was the fifth man?

52 Q. Right. A. No, it would not affect me.

Q. Now, do you have a foreman on most jobs? A. Yes.

Q. And isn't it a fact that the foreman is the first man on the job? A. My jobs, the foreman is from the carpenters.

Q. How about tapers, do you have a taper foreman? A. Yes, I have a taper foreman.

Q. Isn't he the first man on the job? A. No, he is not.

Q. He is not? A. No.

Q. When I say first, that is the shop steward would come after the foreman, wouldn't he? A. My taper foreman rides around in a car and checks on the rest of my tapers.

Q. He doesn't work on any job? A. No.

Q. Now, apart from these two tapers, do you employ any other Local 798 men or men working under the jurisdiction of Local 798? A. Not right now.

Q. Now, according to the collective bargaining agreement in effect between 1970 and 1973, there is no seniority, is there, among the men? A. No, there is not.

Q. You can hire -- I will ask that be stricken.

In connection with layoff, you can lay off the tapers in any order that you want? A. Yes, that's right.

Q. The fact that the taper was the first man on doesn't mean that he is the last man on the job? A. If he is the shop steward, then our clause is in our agreement.

Q. Only if he is a shop steward? A. That's right.

Q. Now, suppose there is a layoff and the shop steward and the foreman are the only two men left on the job.

Isn't it a fact that the foreman is the last man on the job?

A. If the union would see that this was a one-man job.

Q. No, if it is a two-man job, the foreman and the shop steward, isn't it a fact that the foreman is the last man on the job?

A. If it is a two-man job?

Q. Right, the foreman and the shop steward. A. The foreman and the shop steward are the last men.

Q. Suppose one man has to be laid off? A. Then it is up to the union's discretion to tell me whether this is a one-man job and if they agree it is a one-man job then my foreman could stay.

Q. Right. Then the foreman stays.

But the steward would not have a right, on a one-man job, to remain? A. This is going to be brought up for renegotiation.

Q. The way it works now, you have been working under the new agreement, have you not? A. Absolutely.

Q. Now, the way it works now, have you ever had an occasion where there are two men left on the job, the steward and the foreman, and one of the men had to be let go, that the foreman was let go?
A. No.

MR. EDELMAN: Are we talking about the present contract or the practice before the present contract?

MR. FLEISCHMAN: The present contract.

Q. (By Mr. Fleischman) Did that also apply in the past under the previous contracts? A. Did what apply?

Q. That the foreman was the last man on the job? A. No, I don't think that was in the previous contract.

Q. All right, what was the practice? A. The practice was we would get a shop steward designated by the union but that shop steward would come in the rank of our employ.

55 Q. Suppose somebody had to be let go and there was only a shop steward and the foreman. Who would remain? A. The past, the shop steward was the last man on the job.

Q. And the foreman would be fired, laid off? A. I think as an employer we would try to keep the job to be a two-man job and then lay them both off.

Q. Suppose you had to go down to one man. Which man would remain? A. The shop steward in the past.

Q. That has happened on your jobs? A. No.

Q. Okay.

Now, does the shop steward have the duty of seeing that the contract is enforced? A. No, I don't think that's his duty. I am not sure.

Q. I will ask you to look at General Counsel's Exhibit No. 4.

MR. EDELMAN: I am going to object on this, Your Honor. The document speaks for itself.

The man is asking whether or not he knows the function of a union representative. I think that's obviously outside his province.

JUDGE WILSON: He can ask what his experience has been. I think I'll overrule that objection.

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Q. (By Mr. Fleischman) Will you please turn to page 26?

A. Okay, I have that.

Q. Particularly the Section 15B. Now -- and also 15C.

Now, isn't it a fact that the steward has the duty of enforcing the trade agreement? Look at the top of page 27. A. That's what it does state here but it's not been a common practice.

Q. But that is what it states. You say it is not the common practice. What do you mean by that? A. The steward -- I'd like to just say one thing about stewards:

I'm in the drywall industry. 90 percent of the stewards employed in the painters industry work for the painter because the painter is the first contractor connected with 79 -- 798 that's usually on the job, so the union would designate a steward to be employed by the painter and that steward would work for the painter and he in turn would be the steward over my man who came on the job later.

This is why I am not too familiar with the duties of a steward.

Q. But you employ tapers directly, don't you?

A. Absolutely.

Q. Do you have stewards on your jobs working for you as tapers? A. Yes.

57

Q. And do they enforce the contract? A. To the best of my knowledge, they don't.

Q. They don't, and these men work for you on a year-round basis? A. Yes.

Q. Weren't you told during negotiations by the representatives of Local 798 that one of the prime reasons for getting stewards in from men who are not part of the regular crew of an employer was to give such shop steward a certain amount of independence so that he would enforce the contract whereas if he were part of the regular crew he would close his eyes and did not enforce the agreement? A. No, I was not.

Q. You never heard of that? A. No.

Q. Nobody ever said that? A. It might have been said. It was not said directly to Audit Olsen.

Q. It was said to the group? A. To the best of my knowledge, it was not.

Q. Never said; you never heard that at any of the negotiating sessions? A. No.

Q. There were never any statements made that the regular crew of an employer usually had a cozy arrangement with the employer so that violations of the agreement were overlooked? A. No, it was not.

Q. Never said? A. No.

Q. Was it ever said to you at occasions other than at the negotiations? A. No, but I would think this might be, in my business, that this might be a practice.

MR. EDELMAN: I move to strike as to what the witness thinks; just as to what he heard or said.

JUDGE WILSON: Denied.

Q. (By Mr. Fleischman) Did the employers in the last negotiations have proposals of their own? A. Yes, they did.

Q. And did the union negotiate on those? A. Yes, they did.

Q. Now, on direct you testified that you felt or believed -- you may have voiced your opinion at negotiations -- that the proposal of the union with respect to the shop steward clause might force you to employ a stranger.

59

Do you recall that? A. Yes.

Q. And the use of the word stranger?

(No response.)

Q. By a stranger did you mean someone that is a taper who was not part of your regular crew? A. Yes.

Q. Since the agreement has been in effect, have you had any grievance with the union concerning the ability of the shop steward to do the work of a taper?

MR. EDELMAN: Objection, Your Honor.

JUDGE WILSON: Overruled.

A. No, I have not.

Q. (By Mr. Fleischman) The steward clause in the new agreement provides, does it not, that the journeyman who is to be designated is to be a qualified journeyman, does it not?

A. Yes.

Q. And an employer has the right under that agreement to go through the grievance machinery if the employer contends the man is not qualified?

MR. EDELMAN: Your Honor, I am going to object to the whole line of questioning. We concede that there may be some employers who are satisfied with the steward.

MR. FLEISCHMAN: I --

MR. EDELMAN: Let me finish my objection.

60

We concede there may be others; we concede an employer, theoretically, can fire any employee and we concede the union can take the thing up to arbitration.

The question before us is whether or not during the negotiations the union demanded and insisted on this clause and, two, whether or not the clause is legal, not how satisfied with the clause the people are now that it is there.

JUDGE WILSON: I think the experience is worth having in this record, even though it's a constitutional question.

I will overrule your objection.

MR. FLEISCHMAN: Would you kindly read the question?

(The incomplete pending question read by the reporter.)

Q. (By Mr. Fleischman) As a taper. A. Yes.

JUDGE WILSON: If you are not going to ask the question, I am.

Have you had more grievances under this new arrangement than previously?

THE WITNESS: I can only speak for the drywall industry in answering that question.

JUDGE WILSON: That is what I want.

THE WITNESS: I feel we have none.

JUDGE WILSON: None now and none before?

61 THE WITNESS: I, I don't feel that we have had any since and --

JUDGE WILSON: All right.

MR. FLEISCHMAN: I'd like to discuss the question of wages as it occurred during the negotiations.

Q. (By Mr. Fleischman) Now, originally the union proposal was for an increase of \$2 an hour, am I correct, for a one-year agreement? A. I am not sure if that was their first proposal.

Q. Let me show you General Counsel's Exhibit No. 5.

MR. EDELMAN: Except one thing: We are not conceding that was the first union proposal.

MR. FLEISCHMAN: Let me explore it.

Q. (By Mr. Fleischman) Now, this is General Counsel's No. 5 which is the union proposal for a trade agreement, and item No. 2 is an increase in wages, \$2 per hour.

Am I correct? A. That's right.

Q. That was for a one-year agreement? A. That's right.

Q. Now, about when was that proposal made? A. January or February, to the best of my knowledge.

Q. That's early in the sessions? A. Yes.

62 Q. You didn't attend the meeting of March 1, 1973, did you? A. I am not sure of the dates of the meetings I missed.

Q. Have you ever seen any minutes of that meeting? A. I have seen minutes of all the meetings. If there was a meeting on March 1st, I read it.

Q. Isn't it a fact that the minutes of that meeting state the union had taken a strike vote on February 23, 1973? A. I am not sure.

Q. You wouldn't deny it?

MR. EDELMAN: Objection.

A. I wouldn't agree to it either.

MR. FLEISCHMAN: By the way, may I have any statement which this witness may have furnished the board?

MR. EDELMAN: Yes, of course.

JUDGE WILSON: How long is the statement?

MR. EDELMAN: The statement is -- it looks like it is nine pages, Your Honor.

JUDGE WILSON: We will take a couple of minutes recess. Let us know when you are through reading it.

(A recess was taken.)

JUDGE WILSON: I will call the hearing to order, please.

MR. FLEISCHMAN: Is there an open question?

JUDGE WILSON: No, you were just going to read the affidavit.

63

Q. (By Mr. Fleischman) What was the first meeting in point of time in which the employer made a proposal with respect to wages? A. I don't recall what meeting they made their proposal.

Q. If I tell you it would appear that the first wage offer made by the employers was on March 20, 1973 when the offer was for 48 cents the first year, 51 cents the second year and 54 cents the third year, would that refresh your recollection? A. Those numbers, those wage numbers come into my recollection because I think I proposed that, but at what meeting it was, I don't recall.

Q. Now, you testified that you weren't really concerned about wages because all wages had to be approved by the Construction Industry Stabilization Committee, or, as you said, Washington.

Now, your first wage proposal, however, was below the wages which were ultimately agreed upon; am I correct? A. That was our first wage proposal.

Q. Well, you recall you said that there was a wage proposal made by you of 48 cents, 51 cents and 54 cents? A. Yes.

Q. And that the agreement which was finally entered into provided for 75, 75 and 75? A. That's correct.

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Q. So, therefore, the employers did offer a or make a lower proposal in terms of wages and what was finally agreed on?

A. Yes, the employees made a lower and the union made a higher.

Q. And if the Washington went out of business to the extent that the CISC no longer had to approve a wage settlement; that is, if they went out of business before the second or third year, then the employers were interested --

MR. EDELMAN: I am going to object to that.

Q. -- in keeping the wage offer down, weren't they?

MR. EDELMAN: I would object on the grounds that the answer is to a hypothetical question and, once more, the union and the company took certain positions with regard to existing conditions.

It's impossible to tell how negotiations would take place with respect to wages without a stabilization board.

JUDGE WILSON: I can't agree. Overruled. You may answer.

THE WITNESS: Would you ask the question again?

Q. (By Mr. Fleischman) Well, the question, precisely put is that if Washington went out of business; that is, the stabilization committee went out of business before the second or third year of the contract, there would be a definite interest on the part of the employers to settle on as low a figure as they could; am I correct?

A. If our government went out of business?

Q. Not the government. I said the stabilization committee, which you testified had to approve all wages. A. We referred that to Washington. I made that statement, Washington.

Q. But if there was no CISC in 1974 or 1975, then you would be governed by exactly what is in the agreement; am I correct?

A. Yes.

Q. Therefore, you would have an interest to keep wages down? A. Right.

Q. On April 26, the employers made an offer of 75 cents the first year, 60 cents the second year and 65 cents the third year.

A. You are asking me or telling me?

Q. Right. A. I am not sure about those figures and that date.

Q. You were present at the April 26 meeting, were you not? A. Yes, I am pretty sure I was present.

Q. I have some notes and I would like to see whether they refresh your recollection.

66

The employers caucused over a three-year agreement, \$2, three years, first year --

MR. EDELMAN: May we know whose notes you are referring to?

MR. FLEISCHMAN: I am just reading them off to see if it refreshes his recollection.

MR. EDELMAN: Any notes?

MR. FLEISCHMAN: That's correct.

Q. (By Mr. Fleischman) First year, 75 cents; second year, 60 cents; third year, 65 cents; the third man from the union.

Do you recall that? A. I recall the, you know, the talk but what meeting it was I don't recall.

Q. Well, wasn't that the meeting at which there was final agreement reached on the 75 cents for each of three years, April 26?
A. April 26?

Q. Right. A. You are talking now April 26?

Q. Yes. A. Yes, I think that was our last that we finally reached the 75, 75, 75.

Q. You finally reached it.

67

Now, during that meeting, at one time didn't the employers offer less than 75 cents for three years; in fact, they offered the figures I quoted just before? A. I am not sure of that offer.

Q. But that offer of 75 cents for each of three years didn't come until April 26? A. Right.

Q. And you recall we agreed that early in the sessions you had made an offer -- what was it, 54, 48 -- A. 48, 51, 54.

Q. And at some point didn't the employer offer more than that but less than the final figure of 75, 75 and 75? A. I am not sure, just from what you read me.

Q. You don't recall any offer of 75, 60 and 65? A. Yes, I do recall it but at what meeting --

Q. All right, then, do you recall making an offer somewhere between the low and the final settlement? A. Yes, I do.

Q. Okay. You testified that there were really three open issues when negotiations broke down; that is, the union went out on strike, you couldn't agree on the three basic issues.

One was the length of the contract, the second was the steward's clause and the third was wages? A. That's correct.

68 Q. Now, the 1970- '73 contract -- I will ask you to turn to the page which has paragraph 15A, and ask you to read that to yourself.

THE WITNESS: Could you tell me what page that is on?

A VOICE: 26.

MR. FLEISCHMAN: 26.

Q. (By Mr. Fleischman) I ask you to look at General Counsel's Exhibit No. 7, page 3, paragraph 11, which is the shop steward's clause, and compare the two clauses; that is, 15A with that.

You will note that the original clause; that is, 15A, makes no mention of a foreman; am I correct? A. (The witness nodded.)

Q. Now, the clause which was finally agreed on, which is on page 3 of the GC 7, says, "The union through the business representatives, shall designate a qualified journeyman as a steward on each and every job and the employer shall designate a foreman on each and every job, subject to the following."

Now, that portion of the clause which says the employer shall designate a foreman on each and every job, that is something new, isn't it? A. Yes.

Q. And that is a clause that is favorable to the employers? A. Yes.

THE WITNESS: Your Honor.

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JUDGE WILSON: Yes.

THE WITNESS: There is a definite difference between these two clauses that we are reading. In the present agreement it said the union shall have the right and in the new agreement it says the union shall designate.

Now, no longer do they, "shall have the right." Now they definitely have the right.

JUDGE WILSON: They make the designation?

THE WITNESS: Now its a fact. Before it was not a fact.

Q. (By Mr. Fleischman) And now a shop steward is a representative of the union, isn't he?

A shop steward is the union representative? A. Yes.

Q. He's there to look out for the union's interest?

A. Yes.

Q. Now, one of the objections to the union's original proposal was that the union will designate the shop steward from among the unemployed; am I correct? A. Yes.

Q. That was deleted from the final agreement? A. Yes.

Q. And that was a concession to the employers? A. Yes.

MR. FLEISCHMAN: I have no further questions.

JUDGE WILSON: General Counsel?

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REDIRECT EXAMINATION

Q. (By Mr. Edelman) Mr. Olsen, you testified in answer to one of Mr. Fleischman's questions something in connection with how shop stewards were hired or how they were selected in the 1970 to 1973 contract.

I am not sure I quite understood that. Can you tell me how they were selected? A. It was a standard practice in our business that if we had a man in our employ from 798, and again I must state

the fact that most of the time shop stewards were not employed by drywall contractors, they came from the painting industry because they were the first man on the job, but it is a standard practice that the shop steward came from the ranks of your employ, providing he was in 798's local.

Q. I take it then under the 1970-1973 contract the union would come down, look at your employees and say, "You are the shop steward?" A. Providing he was -- he met the qualification to be a shop steward.

Q. Whatever they were, right.

How was the proposal of the new selection of shop stewards to be carried out in connection with the new contract demands?

A. At first it was brought up that the shop steward would come from the unemployed list.

Q. In other words, that would not be one of your employees?

A. It would be from a man who was out of work and he was in Local 798, unemployed.

Q. He wasn't one of your regular employees? A. Absolutely.

Q. He wasn't on your staff at the time? A. No, he was not, and the bosses objected to that unemployed thing, and I must say the union later on gave in to it.

The bosses object to it because there is a certain amount of men that are always unemployed and we didn't want to have to get a steward from that caliber of man.

Q. Why are they always unemployed, if you know?

A. I can't give you the reason. You know, we have so much work in our industry, there is always some people out of work, and it's the same people constantly.

Q. Is there any particular reason why these same people should be out of work that you would know? A. They are not

good qualified men or they don't have to work, they can collect unemployment insurance.

72 Q. What about as you agreed, to this proposal? Is the shop steward that is selected, does he come from someone that is employed by you in an existing complement or is he selected by the union from someone who is not already employed by you?

A. He is selected by the union, someone who is not employed by me.

Q. Now, with respect --

JUDGE WILSON: That's under this present contract?

THE WITNESS: Yes, that's what I think he asked.

MR. EDELMAN: Yes, I did. That was my question.

Q. (By Mr. Edelman) So that the different wording aside, the practical difference would be that in past years the shop stewards were selected from one of your normal employees and now they are selected from someone who is not a member of your normal staff?

A. That's correct.

Q. Now, you testified in connection with the demand as agreed upon in the present contract, demand No. 11 with respect to appointing qualified foremen, is that correct?

Mr. Fleischman pointed out to you that now you can select a qualified foreman, is that right? A. That's right.

Q. Under certain conditions, and I ask you to read, if you would, to yourself, Section 14 of the contract.

Are you familiar with that provision? A. Yes, now that I've re-read it I am familiar with it.

73 Q. What is a charge man? Section 14 is called charge man, is that right? A. My -- I would interpret charge man as foreman.

Q. Now, would you tell me what the import of Section 14 is? A. The meaning of it?

Q. Yes. A. Is that -- the meaning of it is that I have the right to appoint a foreman when I have four or more journeymen on the job and the union is telling me to pay this man more wages than the regular.

Q. So that the existence of appointing a foreman is not new? A. No, it's not new.

JUDGE WILSON: When you say four men on a job, does that include carpenters as well as tapers?

THE WITNESS: I -- this is just the painter's agreement and I would think they were only pertaining to their, their men, four of their men.

JUDGE WILSON: It wouldn't apply to you at all?

THE WITNESS: There are times when I have more than four tapers on the job, even though I only employ two of their tapers regularly.

JUDGE WILSON: All right.

Q. (By Mr. Edelman) Under usual conditions is it your practice to designate a foreman on the job? A. Yes.

Q. This is the practice of other employers?

THE WITNESS: Excuse me.

MR. EDELMAN: Yes?

THE WITNESS: My foreman -- maybe I am a little different than others. I have a taper foreman that just rides around and he is the general foreman of all my jobs.

Q. (By Mr. Edelman) How about other drywall employers? Are you familiar with their practices? A. They would put a foreman on each and every job.

Q. That would be their practice? A. I, yes, I would think so.

Q. Whether or not it provided in the contract? A. Yes.

MR. EDELMAN: I have no further questions.

RECROSS EXAMINATION

Q. (By Mr. Fleischman) In connection with the charge man or foreman, if you had a foreman and a steward on your job and you claimed it is a one-man job and the union agreed with you, the steward would be the one laid off, correct? A. Correct.

Q. Therefore, the foreman would be the last man on that job? A. Correct.

75 Q. So now, under the new agreement you have a right to designate a foreman on every job, correct? That's what it says. A. Yes.

Q. So, therefore, whenever any job comes down to being a one-man job, it's the foreman who is your representative who remains on the job; am I correct? A. That's correct.

Q. Now, did you ever hear of the term lumping? A. Yes.

Q. What is lumping? A. Lumping is where a man goes out and piecework, gets paid per what he does.

Q. Now, the contract does not permit lumping, does it? A. No.

Q. It requires payments be made on an hourly basis? A. That's right.

Q. You have heard in the drywall and painting industry that there are tapers who are employed by employers who are paid in accordance with a lumping understanding; am I correct?

You have heard of that? A. I would like only to talk for the drywall industry.

Q. Have you ever heard that there were tapers -- the union has charged that there are certain tapers who have been paid on a piecework basis?

MR. EDELMAN: Your Honor, I am going to object at this point on the grounds of relevancy. I don't see what it has to do with the negotiations.

I certainly don't see what it has to do with the shop steward's clause.

MR. FLEISCHMAN: I'll connect it.

JUDGE WILSON: With that exception, I will overrule the objection.

A. Yes, I have heard this does exist.

Q. (By Mr. Fleischman) And if an employer has a steady crew, it is easier, is it not, for that employer and the members of his steady crew, the tapers, to enter into a lumping arrangement, particularly if one of that steady crew is the shop steward; am I correct? A. I am just going to talk for my business, because I have had employees for me from 798 for 12 years and they have never lumped nor have I ever entertained the idea for them to lump because they were with me for such a long time.

Q. But you have heard of that practice -- A. Yes.

Q. -- amongst other employers? A. I have heard it.

MR. EDELMAN: I am going to object at this point, Your Honor, on the grounds that --

JUDGE WILSON: What are you objecting to right now?

There is no question pending.

MR. EDELMAN: To the relevancy of this line of questions. It seems to me -- Mr. Fleischman can correct me if I am wrong -- he is driving at the reasons the union was advancing for the shop steward's clause, and I am sure the union had reasons that were close to their hearts just as unions have reasons close to their hearts when they insist on hot cargo agreements.

It is not the issue as to what motivated the union to seek this clause and/or how legitimate or sincere, rather than legitimate -- how sincere their intentions were in obtaining the agreement.

The question before us is whether or not the agreement that they were seeking was a lawful one and I think any questioning going to the reasons is really immaterial at this point.

JUDGE WILSON: Does this apply to the legality question?

MR. EDELMAN: I don't believe so, Your Honor.

JUDGE WILSON: I will overrule the objection.

MR. FLEISCHMAN: I have no further questions.

JUDGE WILSON: An exercise in futility.

MR. EDELMAN: I have no further questions either.

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MR. FLEISCHMAN: The reason is, if I may say, I believe I laid the foundation here and that I intend to call somebody for the union to expand on the evil in the industry that the union tried to cure.

JUDGE WILSON: All right.

Any further questions for Mr. Olsen?

MR. EDELMAN: Just one.

JUDGE WILSON: All right.

FURTHER REDIRECT EXAMINATION

Q. (By Mr. Edelman) With respect to a one-man job, you testified if it is a one-man job the foreman will work the job, is that right? A. That's right.

Q. Who determines if it is a one-man job? A. The union has a right to determine that.

MR. EDELMAN: No further questions.

MR. FLEISCHMAN: I ask you to turn to General Counsel's No. 7.

THE WITNESS: Which page?

MR. FLEISCHMAN: On page 3. I ask you to look at sub-clause D.

FURTHER RECROSS EXAMINATION

Q. (By Mr. Fleischman) That states, does it not, that one man jobs are exempt from the steward's program, subject to investigation by the business representative, correct, 11D?

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THE WITNESS: 11B like in bad?

Q. D.

THE WITNESS: Oh, D?

A. Yes, that's --

Q. It doesn't say that the business representative makes the final decision, does it?

THE WITNESS: Excuse me, Your Honor. You have to realize --

Q. Does it say that?

JUDGE WILSON: Let him answer the question.

MR. EDELMAN: I object to the question. The document speaks for itself, Your Honor.

THE WITNESS: In the construction business, we have, we have so much time to do a job and if I was going to start a job on Wednesday and I would call up either one of these business agents here and ask them to come down, I want to start their job with one man, and ask them to come down, it would be their decision whether this is a one-man job that day or what the attorney is asking or I could wait a week and now go before a joint trade board and get the final answer, but what do I do to get my job?

Q. (By Mr. Fleischman) Doesn't paragraph 11C tell you what the union could do if you don't agree? A. No work stoppage.

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Q. By the union, and doesn't paragraph B tell you that it is then the subject of a grievance? A. Yes.

MR. FLEISCHMAN: No further questions.

MR. EDELMAN: I have no further questions.

JUDGE WILSON: Mr. Popkin?

MR. POPKIN: None, sir.

JUDGE WILSON: Apparently that's all. Thank you very much, Mr. Olsen.

(Witness excused.)

JUDGE WILSON: You may call your next witness.

MR. EDELMAN: Counsel for the General Counsel calls as his next witness Mr. Irving Howard.

JUDGE WILSON: Would you raise your right hand, please? Whereupon,

IRVING HOWARD

was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

JUDGE WILSON: Would you state your full name and spell your last name for us, please?

THE WITNESS: Irving W. Howard.

JUDGE WILSON: Thank you.

DIRECT EXAMINATION

Q. (By Mr. Edelman) Mr. Howard, are you employed?

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A. Yes, I'm self-employed.

Q. The name of your employer? A. Denbar Decorating Company.

Q. What type of business is Denbar Decorating?

A. Painting.

Q. Painting contractor? A. That's right.

Q. What is your position with Denbar? A. Sole owner.

Q. And do you have any employees that you employ as painters? A. Yes, I do.

Q. How many do you employ? A. Oh, I would say two or three.

Q. Are these regular employees? A. Yes.

Q. In connection with your business, do you do painting contracting, as it would be described in the trade? A. Yes, yes.

Q. That is -- A. Contractor for painting, yes.

Q. Each job is a separate job? A. That is correct.

Q. Are some jobs larger than others? A. Yes.

Q. Do you from time to time employ a larger complement of painters than your regular employees? A. Yes, dependent on the job.

Q. You are a member of the Painters Association?

A. Yes, I am.

Q. Represented by Local 798? A. That's right.

Q. When you need another painter to do the job, or more than one painter, how would you go about obtaining the services of a painter? A. Well, I -- well, it depends on what contract, whether there is a previous contract or the original contract.

See, the previous contract, when we needed men we reported the job and then we put our own men to work. Now when the job is reported the business agent will come around and check the men on the job and pick a steward and appoint him.

Q. You are talking about a steward? A. Yes.

Q. That's how stewards were picked? A. That's correct, from the men employed on the job.

Q. Now let's say you wanted to hire a new employee, forgetting about a steward. We are talking about the 1970-'73 contract.

You need another painter or two. How do you go about hiring this other painter? A. Well, I either call up my men that have

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been employed by me previously and if they are not working they, they just come over and work for me.

Q. You call them? A. I call them by phone directly.

Q. At their home? A. At the home, and if they are working -- if they are not working they will come and work for me. If they are and I can't get the man I just call the local, call one of the business agents, whatever district that's in.

Q. Do you know if this is the way other painting contractors hire other employees, new employees? A. I assume it is.

Q. Is this your experience in the trade, as far as you can say, or is this just a total assumption? A. No, I'd say that's the experience in the trade.

Q. Do other painting contractors employ a regular complement of employees? A. Yes.

Q. And in your association are there some large painting contractors? A. Yes.

Q. How many employees would they regularly employ?
A. That I don't know.

Q. Would it be in excess of 10 or 15?

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MR. FLEISCHMAN: I object.

A. I don't know.

JUDGE WILSON: I don't think we need to rule on that objection.

Q. (By Mr. Edelman) With respect to hiring shop stewards -- I'm sorry -- with respect to appointing shop stewards you testified how it was done with respect to yourself.

Do you know if this is the practice with respect to other employers in the industry? A. I assume it is.

Q. Do you know if it is the trade practice? A. Yes, it is based on the trade practice.

Q. Were you present during the negotiations that took place in December to April of 1973, December 1972, April 1973?

A. I would say I was present at about 80 percent of all meetings.

Q. I am going to ask you to direct your attention to the early meeting that was held in December and ask whether or not you can recall whether the union furnished a list of written demands at that meeting? A. Yes, they did.

Q. This is at the December meeting? A. That is right at the inception.

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Q. I am going to show you an exhibit that was marked GC-6 for identification and ask you if you recognize that. A. I think this was the second, if I am not mistaken, the second demand.

Originally, I think originally they had a list of about 20 demands and this, I think, was in addition thereof; some changes that had been made. Originally they had a long list.

Q. Well, I ask you to look at the date typed on that list and ask if that refreshes your recollection. A. No, it doesn't. The date doesn't mean anything.

JUDGE WILSON: Let's show him GC-5 and see if that's the one he thinks was proposed first.

Q. (By Mr. Edelman) Well, all right, I show you this GC-5 in evidence and ask you whether or not that was proposed first? A. Yes, yes, this seems to me, is the original. It was a list of 20 demands and there were added on after that a couple of more.

* * * * *

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JOHN A. BLUSONIS

was called as a witness by and on behalf of the General Counsel, and, having been first duly sworn, was examined and testified as follows:

JUDGE WILSON: Would you state your full name and spell your last name for us, please.

A. John A. Blusonis, B-l-u-s-o-n-i-s.

DIRECT EXAMINATION

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Q. (By Mr. Edelman) Mr. Blusonis, are you presently employed? A. Yes.

Q. And your employer? A. Levine --

A VOICE: Levin.

Q. (By Mr. Edelman) Are you also a member of Local 798? A. I am.

Q. Are you a representative of Local 798? A. No.

Q. Were you a representative of Local 798 during the negotiations? A. Yes, recording secretary.

MR. EDELMAN: Your Honor, I request permission to examine the witness under Rule 43B.

JUDGE WILSON: You examine the witness and we'll worry about the 43B later, if necessary.

Q. (By Mr. Edelman) Mr. Blusonis, is it true you were present at the negotiations that took place between Local 798 and the Painters Association and Drywall Association? A. Yes.

Q. Is it true that you were present at all these negotiations? A. Yes.

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Q. Is it true that you took all the minutes on behalf of the union for these negotiations? A. Yes.

Q. Is it also true that on December 13, at a negotiating session, the union submitted demands to the employers association? A. I believe that is correct. I believe that was the time that we submitted the first one.

Q. Let me show you the document marked General Counsel 6 and ask you if you have seen that before. A. Yes.

Q. Is that the demands that the union submitted on the 13th? A. That was submitted, I believe, at that date. Then, also, I think during the course of negotiations at that meeting where we referred the union reserve the right to submit additional proposals.

Q. But were these proposals submitted? A. Yes.

Q. Were these the first proposal submitted? A. That's correct.

JUDGE WILSON: The first proposal submitted?

MR. EDELMAN: Yes.

JUDGE WILSON: Were those the first proposals submitted?

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THE WITNESS: That was the synopsis, if I can interpret it that way.

MR. EDELMAN: Your Honor, if I may --

JUDGE WILSON: I thought there was some proposals submitted as early as December.

MR. EDELMAN: This is December, Your Honor, December 13th.

JUDGE WILSON: I have in my notes they were submitted April 13. Am I wrong about the April?

MR. EDELMAN: Yes. If you will permit me, I think I can clarify any misconception you have.

JUDGE WILSON: All right.

MR. EDELMAN: I would offer these into evidence at this time.

JUDGE WILSON: Let's clarify them first.

MR. FLEISCHMAN: I have one or two questions on voir dire.

JUDGE WILSON: All right.

VOIR DIRE EXAMINATION

Q. (By Mr. Fleischman) In the upper right-hand corner there is a notation, the word withdrawn.

THE REPORTER: That's my marking.

MR. FLEISCHMAN: Then strike out my question.

JUDGE WILSON: All right. In other words, the withdrawn was put on there by the general counsel?

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MR. EDELMAN: Right.

MR. FLEISCHMAN: I didn't know.

JUDGE WILSON: All right.

MR. EDELMAN: Your Honor?

JUDGE WILSON: I would like to know when that was submitted before I admit it.

MR. EDELMAN: The testimony that I have from the witness I thought was it was submitted on the first session on December 13.

Is that right, Mr. Blusonis?

THE WITNESS: Well, the date these were -- now, if they were submitted on that date, the only way I would recall was by checking my own minutes.

MR. EDELMAN: Would you do that?

THE WITNESS: Abe, may I have them, please?

MR. EDELMAN: Do you recall that there were proposals submitted on December 13?

THE WITNESS: As soon as I check the --

(Documents handed to the witness.)

THE WITNESS: Yes, at that meeting it is stated in my minutes "proposal was submitted by the union and the union reserves the right to add additional proposals and both associations requested the same right. "

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Q. (By Mr. Edelman) Would this be that initial set that you submitted? A. I believe so.

Q. Just before I introduce it into evidence and just for the purpose of clarification, is this the set of proposals -- I show you General Counsel's Exhibit 5 -- that you submitted later? A. That is correct.

Q. That's dated 1/23. Would that be on or about the date you submitted that at that meeting? A. My minutes note that communication we sent to secretary asked the proposal to date from the union -- that probably reflects back to this, then.

JUDGE WILSON: By this, you refer to General Counsel's Exhibit 5?

THE WITNESS: That's right.

Q. (By Mr. Edelman) They were submitted on or about January 23rd, at that meeting? A. Correct.

MR. EDELMAN: In that case, I would offer General Counsel Exhibit 6.

JUDGE WILSON: Any objection?

MR. FLEISCHMAN: No objection.

JUDGE WILSON: They will be admitted.

MR. FLEISCHMAN: Could I have a copy of that?

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 6, previously withdrawn, was now received in evidence.)

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Q. (By Mr. Edelman) It is a fact, is it not, Mr. Blusonis, that the steward clause -- that would be clause No. 15 in this set of proposals --

JUDGE WILSON: General Counsel's Exhibit 6, please.

MR. EDELMAN: General Counsel Exhibit 5.

JUDGE WILSON: 5? I beg your pardon.

Q. (By Mr. Edelman) It is a fact, is it not, that Clause No. 15 was brought up at all of the negotiations, is it not?

A. I'd say it was, yes, as were the wages and hours.

Q. But that was brought up at each and every session, is that right? A. That's correct.

Q. And the association --

JUDGE WILSON: Does that mean it was brought up on December 13 as well as after January 23rd?

THE WITNESS: I don't recall whether we took up stewards on the 13th or not, and on that exhibit of our few proposals that we submitted originally I don't know. I am pretty sure that stewards was mentioned there. I am not quite sure.

JUDGE WILSON: All right.

Q. (By Mr. Edelman) Directing your attention to the March 29 meeting which would be the meeting before the strike --

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have you got your minutes on that? A. Yes.

Q. The shop steward issue or clause was brought up and discussed at that meeting, is that correct? A. That's correct.

Q. And the union insisted on its original wording, is that correct? A. It must have been brought up because I have 15 here with the associations, where the association is rejecting 15 again.

Q. Do you recall whether or not the union had insisted on the 3/29 meeting that the original wording as first proposed

by the union remain the union's proposal? A. At the -- may I have that question again, please?

Q. Yes. At the 3/29 meeting is it a fact that the union continued to press its original demand for the stewards clause?

A. That was one but also at that meeting --

MR. EDELMAN: No, just -- I will get --

MR. FLEISCHMAN: Let him finish.

MR. EDELMAN: He says that's one. I'd like him to answer the question.

MR. FLEISCHMAN: He did answer and then he was going to continue.

MR. EDELMAN: I don't want to hear him discuss other things discussed. I'll bring it up.

MR. FLEISCHMAN: Let him finish his answer.

JUDGE WILSON: I think he has the right to finish his answer. Go ahead.

THE WITNESS: At the meeting of the 29th, that was not only discussed but it was also discussed on the terms of the agreement and the wage offers.

MR. EDELMAN: I didn't ask that. Now I am going to move --

JUDGE WILSON: Denied.

THE WITNESS: It was part of the whole thing that was discussed.

MR. EDELMAN: Okay.

Q. (By Mr. Edelman) At this meeting, the association in fact gave a wage offer of 60, 50 and 50 for three years and the union made a counter offer of 1, 1 and 1 for three years and the stewards clause, is that right? A. I believe so.

Q. Then the association countered and raised its offer on wages to 70, 50 and 55 subject to CISC approval but looked to

eliminate the stewards clause, is that correct? A. That is correct.

Q. You then lowered the demand to 70, 80 and 95 but continue to press for the stewards clause in its original form, is that correct? A. Correct.

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Q. As a matter of fact, the meeting ended with no agreement on wages or the stewards clause, is that correct? A. That's correct.

I have a note here, 'Employers stand pat on an offer of \$1.80 and the stewards in the old agreement.' That's the way the meeting broke up.

Q. You were looking for a certain wage offer with the stewards as originally proposed? A. Yes.

Q. Now I direct your attention to the April 6, meeting.

Do you recall that Mr. Popkin at that time, the attorney for the association, spoke out in some length against any shop stewards clause, and this is after the strike, is it not, the April 6 meeting? A. That is correct.

Q. That the union at that time continued to press for it, is that correct? A. The union was standing pat.

Q. Isn't it a fact that at the April 6, meeting the only subject that was discussed was the shop stewards clause and there was no wage offer made at this meeting? A. My minutes read the same.

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Q. Now, at the April 12 meeting, the union continued, did it not, to press for the stewards clause as originally proposed, is that correct? A. The union at that time made a counter proposal, 'The employer shall have the right to designate a foreman on each job and a union to designate a steward on each job from the union.'

At that meeting I believe the word "from the unemployed" was struck out from the original proposal, and it goes on and it states further --

Q. Excuse me. Could you just explain something to me?

What is the difference between designating a steward from the unemployed and designating a steward from the Union? A. Well, that's what they objected to, the word "from the unemployed."

Q. I understand they may have objected. What would be the difference in supplying a man from the union or supplying a man from the unemployed? Wouldn't it be the same? A. This is --

MR. FLEISCHMAN: The previous witness testified to this.

JUDGE WILSON: The previous witness testified to that. Go ahead, Mr. Blusonis.

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THE WITNESS: The employers were -- objected to the word from the unemployed and for us to get away from a stalemate that we were in at that time the wordage was changed.

MR. EDELMAN: I see.

THE WITNESS: And the unemployed part was struck out, which they had objected to right along.

JUDGE WILSON: So that that meant, did it not, that if the employer had a local union man in his regular crew that the union could designate that man as the steward?

THE WITNESS: That was under the old agreement.

JUDGE WILSON: Was that so under the new agreement too?

A VOICE: The union could designate -- excuse me.

THE WITNESS: That's right.

* * * * *

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Q. (By Mr. Edelman) But it also gave the union greater latitude? In other words, for example, let's say an employer

had on his staff three employees and none of whom the union had any confidence in.

The union then had a right to say, "No, we don't want to designate any man on your complement of employees. We want you to take another man that we have. We want you to put him on as the steward and lay one of them off -- lay one of your employees off"?

The union had the right to do that under this clause, is that not correct? A. I don't think the union ever stated about telling an employer to lay off any man because we haven't got that right.

Q. But you had the right then to designate and say, "We don't want to pick a shop steward from the employees that you have presently employed, we'll send you one?" A. That there is what

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we were fighting for, to protect our work.

Q. And to protect your work you wanted to be sure that you appointed a shop steward that you could send out to the job because you knew he would be the type of shop steward that would enforce and police the contract, is that correct? A. That is correct.

Q. And, as a matter of fact, that was a primary importance to the union, is that correct? A. Plus the wages and also the term of the agreement.

Q. But you were couching your wage proposals in terms of three years, were you not? A. Not in our original proposal.

Q. But your latter proposals were in terms of three years? A. That's right.

Q. So you had agreed, in a sense, without saying so, that you were going to go along with the three-year contract?

MR. EDELMAN: Withdraw the question.

Q. Your wage proposals were couched in terms of three years at the latter stages of negotiations, is that correct?

A. That was the, between both parties, the association and the union.

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Q. All right, fine, and it was also of primary importance that the union must maintain machinery so that they could choose the shop steward to effectively police the contract, is that correct? A. That was one of our proposals.

Q. You were willing to strike unless you could get that proposal, is that correct? A. The word strike is the question that you are asking me, you have to take in the overall picture: The wages, steward and the term of the agreement.

Q. Right, but you knew that the wages were going to be controlled by Washington. That was the situation that existed, and there was no reason for you to believe at that time that it was going to change.

As a matter of fact, it hasn't changed to date, is that right?

A. At that time nobody knew whether it would change or not.

Q. There was no reason for you to presume it was going to change, is that correct?

MR. FLEISCHMAN: I object. He is getting argumentative.

JUDGE WILSON: I think we are starting the argument of this case a little early. I think that's a good thing to put in your brief.

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Q. (By Mr. Edelman) Do you recall at any time during the latter course of negotiations speaking to a reporter from Newsday Magazine or Newsday newspaper? A. Probably did, yes.

MR. EDELMAN: Let me have this marked as General Counsel's Exhibit 8.

(The document above-referred to was marked General Counsel's Exhibit No. 8 for identification.)

Q. (By Mr. Edelman) Do you recall taking a look at that article when it was printed? A. I don't remember the date of it.

Q. Do you recall the article? A. Yes, I seen it before.

Q. Do you recall whether that was prior to the strike or during the strike or after the strike?

Take a look at it again. A. I don't know about -- I remember reading this article and I remember talking to the newspeople but to me it doesn't seem that this reads correctly because we took an order, we rejected --

Q. When you say it doesn't read --

JUDGE WILSON: Let him finish --

THE WITNESS: Don't put words in my mouth, please.

We rejected their offer. It was voted on. As far as the strike vote was concerned, that was taken in February.

MR. EDELMAN: Your Honor, the witness is not responsive.

102 I didn't ask him when the strike vote was taken. I asked him if he read the article.

THE WITNESS: Yes, I remember reading the article.

Q. (By Mr. Edelman) Do you remember when you read the article? A. No, I don't.

Q. Do you remember whether it was during the course of the negotiations that you read the article? A. I believe so.

Q. The article was written, I take it, pursuant to an interview you had with a Newsday reporter? A. Yes.

MR. EDELMAN: I propose that the article be admitted as General Counsel's 8.

JUDGE WILSON: Does that article accurately reflect your conversation with the newspaper man?

THE WITNESS: No, not, not in my opinion, because I think when I referred back where the local took a strike vote back in February, this had to be much later. That's why I say the word, the wordage doesn't come out, you know, with the actual time of things, the way they did happen.

JUDGE WILSON: Are you offering that?

MR. EDELMAN: I am.

JUDGE WILSON: Any objection?

MR. FLEISCHMAN: I have no objection.

JUDGE WILSON: It will be admitted.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 8, was received in evidence.)

Q. (By Mr. Edelman) Now, directing your attention to the April 26th meeting, it is true, is it not, that the association proposed at this time that the fifth man could be designated as the shop steward? A. Every fifth man, correct.

Q. In other words, it would be the fifth man on each -- every fifth man on each job? A. That's correct.

Q. And the union again held fast to its original demand that the first man be the shop steward, is that correct? A. That's correct.

Q. And then the Employers Association modified their proposal and suggested every third man? A. That's correct, with a wage offer.

Q. With a wage offer, and the union at that time also rejected the proposal with respect to the third man, is that correct?

A. That's correct.

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Q. As a matter of fact, in one of the negotiations in April, didn't the employer offer \$2, \$2 and \$2 an hour if the union would drop the whole stewards clause? A. I don't recall that.

Q. It is a fact, is it not, that the strike was settled and the contract was approved only when the employers agreed to go along with the shop stewards clause?

MR. FLEISCHMAN: I object. The contract speaks for itself.

JUDGE WILSON: I have to sustain that objection to the phraseology.

Q. (By Mr. Edelman) It is a fact that the issue that settled the strike was the agreement by the employer association to the shop stewards clause, is that correct?

MR. FLEISCHMAN: I object.

JUDGE WILSON: Overruled. You may answer.

THE WITNESS: Repeat the question.

MR. EDELMAN: Would the reporter please repeat the question?

(The pending question read by the reporter.)

A. That was one of the reasons, but there was two other reasons that settled the whole thing, and that was a three-year agreement, wages 75 cents, 75 cents, and that's the way the steward wordage was spelled out and agreed on by all parties so you have, you have to take the whole three of them into consideration because even if it wasn't a three-year agreement or without the wages nothing would have been settled.

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Q. (By Mr. Edelman) You say there was a combination or this was a combination of the three? A. That's right, it was more or less of a package deal.

Q. And the union was not going to drop the steward demand from its package in return for a wage demand, is that correct?

A. I don't think so.

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CROSS EXAMINATION

Q. (By Mr. Fleischman) Did the employers at any time agree to a one-year agreement? A. No, not to my knowledge.

106 Q. And did they insist throughout the negotiations that unless they got a three-year agreement they would not enter into the agreement? A. That was their proposal and they stood fast on it.

Q. Now, isn't it true that it wasn't until the meeting of April 26, 1973, the date on which all the terms were wrapped up, that that was the first time the employers offered 75, 75 and 75 cents? A. I believe that was the date.

Q. And they had never offered those figures prior to that date? A. That is correct.

Q. Now, at one time in your direct testimony you stated you wanted the steward clause -- by you I mean the union -- in order to protect your work, and I presume by your work, you meant the work of the union? A. That is correct.

Q. Or our work -- I'm sorry -- protect our work.

Did you explain that? A. In, in years gone by, if the union didn't have a steward on a job to check the rules and regulations, violations occurred often and if we had men that were willing to work and go to work there was no chance for a man to get a job.

107 The main reason I think that my local union, that we felt the union had a right to designate a steward to protect our rights so that the rules of the trade agreement would be lived up to.

Q. And to what extent or what manner was the union handicapped in protecting its rights when the choice of or the selection of stewards had to be made from among employees in the then

existing crew of the employer? A. Oh, the union didn't have a designated steward there and the violation is created and we had nobody actually representing the union where the union appointed the stewards, or, rather, designated the steward of their choice.

This way here, in the old agreement the union would designate already one of the men that were employed. Therefore, there actually was no representation for the union to enforce our trade rules.

Q. Why wasn't the steward selected from the regular crew of the employer as good as the steward selected from the union?

A. Very simple. If a man works in a shop or an employer for years, his primary interest is working for the employer and having a steady job. His interest is not for the benefit of his fellow members.

Q. In what way could that man, or if he were, steward, undercut the agreement or fail to enforce it? A. Well, rules and regulations: The first one stands out in my mind, we didn't allow our rollers -- probably rollers at that time but not sticks

108 and it was always brought up and brought to our attention that this violation was being committed and other violations also, which these, which was allowed on the jobs under the old agreement.

JUDGE WILSON: Using "sticks" and "rollers" may mean something to you but it doesn't mean anything to me. Could you explain?

THE WITNESS: In our old agreement, also in our present agreement, I think the handle, it's -- the longest we allow is a 12-inch handle and on certain jobs and a 7-inch roller (indicating) and no more, and to work out of a 2-gallon bucket.

Where the violations occurred, they would take a 9-inch roller and they would take a stick in, put it down here and do the ceiling.

Well, naturally it took work away from our men.

JUDGE WILSON: I see. Okay.

Q. (By Mr. Fleischman) Now, have you ever heard of the term lumping? A. I have.

Q. And in what particular aspects of the trade; that is, painting, decorating, taping and so forth, have you encountered lumping? A. I think mostly it is mentioned in the taping business. In some cases, also, in the painting but mostly it's been brought to my attention that's primarily the taping industry.

Q. Where you have lumping and taping, how are the men paid? A. Well, underneath the cover or off the books. There is a lot of ways.

Q. I mean, how is the piecework measured, by number of feet of tape or rolls? A. I wouldn't know because I never done it but I figure that's probably the way.

Q. Has this been a common issue or discussion among the union members -- A. Oh, yes.

Q. -- at meetings? A. Oh, yes.

MR. FLEISCHMAN: I have no further questions.

JUDGE WILSON: Mr. General Counsel?

MR. EDELMAN: No further questions, Your Honor.

JUDGE WILSON: Apparently that's all. Thank you very much, Mr. Blusonis.

(Witness excused.)

MR. EDELMAN: I have no further witness, Your Honor.

JUDGE WILSON: Does that mean you rest?

MR. WILSON: That's what it means, yes, sir.

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ARTHUR J. MORELLI

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

JUDGE WILSON: Would you state your full name and spell your last name for us, please?

THE WITNESS: Arthur J. Morelli, M-o-r-e-l-l-i.

JUDGE WILSON: Thank you.

DIRECT EXAMINATION

Q. (By Mr. Fleischman) Mr. Morelli, do you hold a position with the union; that is, Local 798? A. I do.

Q. What position? A. Business representative.

Q. How long have you been a business representative?
A. Going on 11 years.

Q. There are various fringe benefits funds, aren't there, associated -- A. Yes, there are.

111 Q. -- with the industry? A. Yes.

Q. What are they? A. Well, the main one is the insurance and welfare, the pension fund and the vacation fund.

Q. That's three funds? A. Three funds.

Q. Now, on all of these funds does the union participate by having joint trustees with the employers? A. They do, equal amount, five each.

Q. Is there a fund to which employers are required to contribute by reason of the trade agreement and on which fund the union does not have any trustees? A. There's -- the union has trustees on all funds and --

Q. What about the promotion fund? A. No, they do not have. We do not consider that a fringe benefit.

Q. That's a benefit for the industry or the employers?

A. Yes.

Q. And the union does not have trustees? A. We do not, no, sir.

JUDGE WILSON: What fund was that?

MR. FLEISCHMAN: Promotion fund.

Q. (By Mr. Fleischman) Now, there is a provision in the 1970-73 agreement which requires employers to contribute to this fund? A. Yes.

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JUDGE WILSON: Which funds?

MR. FLEISCHMAN: The promotion fund.

JUDGE WILSON: All right.

Q. (By Mr. Fleischman) And as you said, that fund is operated entirely by the employers? A. That's right.

Q. Now, if an employer does not make a contribution to that fund pursuant to the agreement, what steps can the union take to enforce that? A. We don't take any steps at all. We are not part and parcel of that fund.

We only police it to make sure the fringe benefits are paid on the three funds that we participate in and that belong to the local union.

MR. EDELMAN: I am going to object to this.

MR. FLEISCHMAN: I will connect it, if I may.

MR. EDELMAN: Okay.

Q. (By Mr. Fleischman) What is the first agreement in which the promotion fund was mentioned? A. That was the last agreement. I think it started April 1, 1970 to March 31, 1973.

Q. To the best of your knowledge, was such a fund created? A. Yes.

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Q. Now, during the 1973 negotiations, that is, the negotiations that began towards the end of 1972 and continued through April of 1973, what if anything was said about the promotion fund by the employers? A. By the employers?

Q. And by the union. A. Well, the employers definitely wanted it but the local union was a hundred percent against it. In fact, a motion was made -- if you want me to add that?

Q. Go ahead. A. On the floor of the local union that we do not sign the agreement if the promotional fund is included in it.

Q. Is that called the promotional -- A. Promotional fund.

Q. I'm sorry. A. Industry promotional fund, IPF.

Q. At any of the sessions in April of 1973 did the employers tie the promotional fund to the steward issue and, if so, how and what was said? A. Well, I don't know about tying it, but it was one of their proposals and it was one that we didn't want, but we sat down and negotiated and even though the union went on record that we should not sign an agreement with the promotional fund it came to a matter of bartering and it was part of, I think, something the union gave up to obtain the steward clause.

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Q. Did the employers' representatives at any time state they would go along with the steward clause if the promotional clause was continued? A. Not outright, but, after discussing it further, at further negotiating meetings, the promotional fund was left by the wayside.

It was taken for granted that if we accepted that they would give us the stewards, so that hasn't been discussed too much after that.

The main issue here was the three clauses, the steward, the three-year agreement and the wages that the local voted on.

MR. FLEISCHMAN: I have no further questions.

JUDGE WILSON: Cross-examination?

CROSS EXAMINATION

Q. (By Mr. Edelman) It's a fact, is it not, that during the meetings that followed after the strike the promotional fund was not discussed? A. Yes, it was, after the strike.

Q. It was not discussed? A. At the meetings?

Q. At the negotiation sessions. A. Well, it was but not too much because, I tell you, it was almost forgotten, a forgotten issue. Even though it was there, when we had the other three items to discuss and we felt as though by doing it the committee even went against the actions of the local union.

Q. I don't want to know really how you felt. I just want to know if it was discussed. A. To a certain extent it was.

Q. A small amount, you would say? A. A small amount.

Q. I am correct, am I not, in assuming that the funds or the clauses of the union was after and insisted upon was a proper wage clause, the term of the contract and the steward clause -- A. That's correct.

Q. -- that's correct, is it not? A. That's right.

Q. You were not going to give up the stewards clause under any circumstances, is that correct? A. That's correct.

MR. EDELMAN: No further questions.

MR. FLEISCHMAN: In connection with the stewards clause, by the time -- well, during the April negotiations the stewards clause had been modified from the original proposal?

THE WITNESS: That's right.

MR. EDELMAN: Do you have anything further?

MR. FLEISCHMAN: Nothing further.

* * * * *

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

PETITIONER,

V.

LOCAL UNION 798 OF NASSAU COUNTY, NEW YORK
BROTHERHOOD OF PAINTERS & ALLIED TRADES,
AFL-CIO, RESPONDENT

No. 75-4095

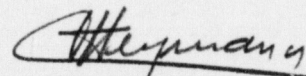
CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the
Appendix in the above-entitled case, on
the following counsel of record, this 29th day of August, 1975.

Messrs. Delson & Gordon
Attn: Ernest Fleischman, Symour P. Kaye
and William Basedow, Esqrs.
230 Park Avenue
New York, New York 10017

Elliott Moore
Deputy Associate General Counsel
National Labor Relations Board
Washington, D.C. 20570

CASILLAS PRESS, INC.



1717 K Street, N. W.
Washington, D. C. 20036
Telephone: 223-1220

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